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APPEALS RELATING TO LIFE SENTENCE
PART-2

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1178 of 2007

Essa @ Anjum Abdul Razak Memon (A-3) Appellant(s)

vs.

The State of Maharashtra,
through STF, CBI Mumbai ...Respondent(s)

WITH
Criminal Appeal No. 1179 of 2007
AND
Criminal Appeal No. 419 of 2011

WITH
Criminal Appeal No. 1181 of 2007

WITH
Criminal Appeal Nos. 1127-1128 of 2007

WITH
Criminal Appeal Nos. 1252-1253 of 2007
AND
Criminal Appeal No. 413 of 2011

WITH
Criminal Appeal No. 1365 of 2007

WITH
Criminal Appeal No. 1224 of 2007

WITH
Criminal Appeal No. 1440 of 2007
AND
Criminal Appeal No. 1028 of 2012

WITH
Criminal Appeal No. 1441 of 2007

WITH
Criminal Appeal No. 401 of 2008
AND
Criminal Appeal No. 1023 of 2012

WITH
Criminal Appeal Nos. 976-977 of 2008

WITH
Criminal Appeal No. 616 of 2008

WITH
Criminal Appeal Nos. 979-980 of 2008

WITH
Criminal Appeal Nos. 633 of 2008

WITH
Criminal Appeal Nos. 651-652 of 2008

WITH
Criminal Appeal Nos. 653 AND 656 of 2008

WITH
Criminal Appeal No. 924 of 2008

WITH
Criminal Appeal Nos. 933-936 of 2008

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Criminal Appeal No. 1178 of 2007

Essa @ Anjum Abdul Razak Memon (A-3) ...Appellant(s)

vs.

The State of Maharashtra,
through STF, CBI Mumbai ...Respondent(s)

WITH

Criminal Appeal No. 1179 of 2007

Rubina Suleman Memon (A-8) ...Appellant(s)

vs.

The State of Maharashtra,
through STF, CBI Mumbai ...Respondent(s)

AND

Criminal Appeal No. 419 of 2011

The State of Maharashtra ...Appellants(s)

vs.

Suleman Abdul Razak & Ors. ..Respondent(s)

WITH
Criminal Appeal No. 1181 of 2007

Yusuf Abdul Razak Memon (A-4) .....Appellant(s)

vs.

The State of Maharashtra,
through STF, CBI Mumbai ...Respondent(s)

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P. Sathasivam, J.

1) Mr. Jaspal Singh, learned senior counsel appeared for the appellants (A-3, A-4 and A-8) and Mr. Mukul Gupta, learned senior counsel duly assisted by Mr. Satyakam, learned counsel for the respondent (CBI).

2) The present appeals are directed against the final judgment and order of conviction and sentence dated 12.09.2006 and 27.07.2007 respectively whereby the appellants have been convicted and sentenced to rigorous imprisonment (RI) for life by the Designated Court under TADA for the Bombay Bomb Blast Case, Greater Bombay in B.B.C. No.1/1993.

Charges:

3) A common charge of conspiracy was framed against all the co-conspirators including the appellants. The relevant portion of the said charge is reproduced hereunder:

> "During the period from December, 1992 to April, 1993 at various places in Bombay, District Raigad and District Thane in India and outside India in Dubai (U.A.E.) and Pakistan, entered into a criminal conspiracy and/or were members of the said criminal conspiracy whose object was to commit terrorist acts in India and that you all agreed to commit following illegal acts, namely, to commit terrorist acts with an intent to overawe the Government as by law established, to strike terror in the people, to alienate sections of the people and to adversely affect the harmony amongst different sections of the people, i.e. Hindus and Muslims by using bombs, dynamites, hand grenades and other explosive substances like RDX or inflammable substances or fire-arms like AK-56 rifles, carbines, pistols and other lethal weapons, in such a manner as to cause or as likely to cause death of or injuries to any person or persons, loss of or damage to and disruption of supplies of services essential to the life of the community, and to achieve the objectives of the conspiracy, you all agreed to smuggle fire-arms, ammunitions, detonators, hand grenades and high explosives like RDX into India and to distribute the same amongst yourselves and your men of confidence for the purpose of committing terrorist acts and for the said purpose to conceal and store all these arms, ammunitions and explosives at such safe places and amongst yourselves and with your men of confidence till its use for committing terrorist acts and achieving the objects of criminal conspiracy and to dispose off the same as need arises. To organize training camps in Pakistan and in India to import and undergo weapons training in handling of arms, ammunitions and explosives to commit terrorist acts. To harbour and conceal terrorists/co-conspirators, and also to aid, abet and knowingly facilitate the terrorist acts and/or any act preparatory to the commission of terrorist acts and to render any assistance financial or otherwise for accomplishing the object of the conspiracy to commit terrorist acts, to do and commit any other illegal acts as were necessary for achieving the aforesaid objectives of the criminal conspiracy and that on 12.03.1993 were successful in causing bomb explosions at Stock Exchange Building, Air India Building, Hotel Sea Rock at Bandra, Hotel Centaur at Juhu, Hotel Centaur at Santacruz, Zaveri Bazaar, Katha Bazaar, Century Bazaar at Worli, Petrol Pump adjoining Shiv Sena Bhavan, Plaza Theatre and in lobbing handgrenades at Macchimar Hindu Colony, Mahim and at Bay-52, Sahar International Airport which left more than 257 persons dead, 713 injured and property worth about Rs.27 crores destroyed, and attempted to cause bomb explosions at Naigaum Cross Road and Dhanji Street, all in the city of Bombay and its suburbs i.e. within Greater Bombay. And thereby committed offences punishable under Section 3(3) of TADA (P) Act, 1987 and Section 120-B of IPC read with Sections 3(2)(i)(ii), 3(3)(4), 5 and 6 of TADA (P) Act, 1987 and read with Sections 302, 307, 326, 324, 427, 435, 436, 201 and 212 of Indian Penal Code and offences under Sections 3 and 7 read with Sections 25 (1A), (1B)(a) of the Arms Act, 1959, Sections 9B (1)(a)(b)(c) of the Explosives Act, 1884, Sections 3, 4(a)(b), 5 and 6 of the Explosive Substances Act, 1908 and Section 4 of the Prevention of Damage to Public Property Act, 1984 and within my cognizance."

In addition to the above-said principal charge of conspiracy, the appellants were also charged on the following counts:

At head Secondly; For commission of the offence under Section 3(3) of TADA, on the count of being an associate and related with Tiger Memon (AA) and in pursuance of the conspiracy during the period December, 1992 to April, 1993 in India, Dubai and Pakistan having conspired advocated, abetted, advised and knowingly facilitated the commission of terrorist act and acts preparatory to terrorist acts i.e. serial bomb blasts in Bombay and its suburbs on 12.03.1993 by doing the overt acts as specified in the said charge framed against each of them, namely,:

Essa @ Anjum Abdul Razak Memon (A-3)

For allowing Flat No. 25 on the 6th floor of Al-Hussaini Co-operative Housing Society Limited, Mahim and garage No.C-3 therein to be used by terrorists for planning and preparation of terrorist acts and for storing arms, ammunitions and explosives and thereby facilitating the commission of the terrorist acts.

Yusuf Abdul Razak Memon (A-4)

For allowing Flat No. 26 on the 6th floor of Al-Hussaini Co-operative Housing Society Limited, Mahim and garage No.O-3 therein to be used by terrorists for planning and preparation of terrorist acts and for storing arms, ammunitions and explosives and thereby facilitating the commission of the terrorist acts.

Rubina Suleman Memon (A-8)

(a) By knowingly facilitating the commission of terrorist act by making arrangements for finance through her bank account and by allowing her Maruti Van No. MFC - 1972 for using it as a transport vehicle by terrorist for carrying co-conspirators, arms, ammunitions and explosives.

(b) By allowing her Flat No. 25 on the 6th floor of Al-Hussaini Co-operative Housing Society Limited, Mahim and garage No.C-3 therein to be used by terrorists for planning and preparation of terrorist acts and for storing arms, ammunitions and explosives and thereby facilitating the commission of the terrorist acts.

4) The charges mentioned above were proved against the appellants except A-8 who was acquitted of: (i) a part of charge stated in clause (a) at head secondly framed against her in respect of having facilitated commission of terrorist acts by making arrangement for finance through her bank account; and (ii) charge stated in clause (b). The appellants have been convicted and sentenced for the above-said charges as under:

Conviction and Sentence:

i) The appellants have been convicted for the offence of conspiracy punishable under Section 3(3) of TADA and Section 120-B of IPC read with the offences described at head firstly and sentenced to RI for life. A-8 was also directed to pay a fine of Rs. 50,000/-, in default, to further undergo RI for 1 year whereas A-3 and A-4 were directed to pay a fine of Rs. 1,00,000/- each, in default, to further undergo RI for 2 years. (charge firstly)

ii) The appellants have also been convicted under Section 3 (3) of TADA for commission of offences at head secondly and sentenced to RI for 7 years along with a fine of Rs. 50,000/- each, in default, to further undergo RI for 1 year. (charge secondly)

Evidence

5) The evidence against the appellants (A-3, A-4 and A-8) is in the form of:-

(i) confessions made by other co-conspirators (co-accused);

(ii) testimony of prosecution witnesses; and

(iii) documentary evidence.

Confessional Statements of co-accused:

6) The involvement of the appellants has been disclosed in the confessional statements of the co-accused. The legality and acceptability of the confessions of the co-accused has already been considered by us in the earlier part of our discussion. The said confessions, insofar as they refer to the appellants (A-3, A-4 and A-8), are summarized hereinbelow:

Confessional Statement of Abdul Gani Ismail Turk (A-11)

Confessional statement of A-11 under section 15 of TADA has been recorded on 15.04.1993 (22:35 hrs.) and 18.04.1993 (01:15 hrs.) by Shri Prem Krishan Jain, the then DCP, Zone X, Bombay. His confession reveals that on the night of 7th March, 1993, when A-11 went to the house of Tiger Memon at Al-Hussaini building, he (Tiger) was having dinner with Yakub Abdul Razak Memon (A-1), Essa @ Anjum Abdul Razak Memon (A-3) and other members of the Memons' family.

Confessional Statement of Mohd. Rafiq @ Rafiq Madi Musa Biyariwala (A-46)

Confessional statement of A-46 under section 15 of TADA has been recorded on 21.04.1993 (19:00 hrs.) and 22.04.1993 (21:25 hrs.) by Shri Krishan Lal Bishnoi, the then DCP, Zone III, Bombay. The confessional statement of A-46, driver of Tiger Memon, reveals that A-3 used to drive one white Maruti 800 car owned by Tiger Memon.

Confessional Statement of Nasir Abdul Kadar Kewal @ Nasir Dhakla (A-64)

Confessional statement of A-64 under section 15 of TADA has been recorded on 22.01.1995 (21:15 hrs.) and 24.01.1995 (09:15 hrs.) by Shri H C Singh, Suptd. of Police, CBI/SPE/STF, New Delhi. His confession reveals that Tiger Memon and his family members used to reside together at Al-Hussaini building. A-64, in his confession, also stated that Tiger Memon fled away from India with his family before the blasts on 12.03.1993 and that shortly after the blasts, police came to Al-Hussaini building in search of Tiger and his family members.

Deposition of Prosecution Witnesses:

7) Apart from the aforesaid evidence, the involvement and the role of the appellants in the conspiracy, as stated above, is disclosed by the deposition of various prosecution witnesses which are as follows:

Al-Hussaini Building:- Place of residence for Memons' family:

Deposition of Dinkar D. Jadhav (PW-312)

At the relevant time, PW-312 was working as a Ward Officer in Bombay Municipal Corporation The relevant material in his evidence is as follows:-

(i) In the Court, PW-312 identified the Report prepared by him (Exhibit 1190) establishing the ownership of A-8 over Flat No. 25 in Al-Hussaini building at Mahim.

(ii) PW-312 also described about the said Report (Exhibit 1190) which was prepared by him after scrutinizing the property records establishing A-8 as the owner of the abovementioned flat at Al-Hussaini building.

Deposition of Wahid Karim Shaikh (PW-87)

The following facts emerge from the deposition of PW-87 dated 04.08.1996:

(i) PW-87, who repairs cycles for a living, was formerly a driver of Razak Memon.

(ii) Memons' including A-3, A-4 and daughter-in-law of Razak Memon used to reside at Al-Hussaini building. PW-87 stated as under:

"3. Razak Memon was residing at the said place along with his

family members. The said members of his family were his wife, his daughter-in-law and his sons, namely:- Anjumbhai (A-3), Yusufbhai (A-4), Yakubbhai (A-1) and Ayubbhai (AA)."

(iii) Essa @ Anjum Abdul Razak Memon (A-3) was having a small white colored Maruti car, a small blue Maruti Car, a red coloured Maruti 1000 and a red coloured Maruti van.

8) Deposition of PW-87 also corroborates with the confession of A-46 which establishes that the Memons' owned a small white Maruti car (i.e. a Maruti 800 car) in addition to other cars. A-46 in his confession further stated that A-3 used to drive this white Maruti car.

9) The evidence on record establishes that the vehicles owned by the Memons' were used for the purpose of organising the blasts and later converted into vehicle bombs. These cars were: a red coloured Maruti Van, a blue coloured Maruti Car, a white coloured Maruti car and a red coloured Maruti 1000. The blue coloured Maruti Car bearing Regn. No. 0672 was used for the blast at Stock Exchange Building. Also, at Sahar Airport, hand grenades were thrown using a motorcycle which belonged to Ayub @ Abdul Razak Memon (AA). Another van bearing Registration No. MFC-1972 which was registered in the name of Rubina Suleman Abdul Razak Memon (A-8) has been used by A-9, A-12, A-44 and Anwar Theba (AA) on the eve of the blasts for taking 3 suitcases filled with bombs in order to cause blasts at three Hotels.

10) Although PW-87 was declared a hostile witness, his evidence can be relied upon in the light of the pronouncement of this Court in Sat Paul vs. Delhi Administration AIR 1976 SC 294 wherein it was held that:

> "52. From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as matter of prudence, discard his evidence in toto."
>
> (emphasis supplied)

Departure from India prior to the blasts:

11) It is also brought in evidence that each of the appellants left India prior to the blasts and arrived back only on 25.08.1994 at New Delhi Airport. The fact stated above is disclosed by the deposition of various prosecution witnesses which are as follows:

Deposition of Ganayansingh Tallaram Padwal (PW-245)

PW-245, at the relevant time, was working as an Immigration Officer at Sahar Airport, Bombay. He deposed that Essa @ Anjum Abdul Razak Memon (A-3) departed from India on 11.03.1993 and he also recognized the embarkation card ('X-405') issued to A-3.

Deposition of V. P. Kelkar (PW-229)

PW-229 was also working as an Immigration Officer at that time. He deposed that A-4 departed from Bombay on 11.03.1993 and recognized the embarkation card (X-368') in the court issued for travel.

Recoveries:

12) The investigation into the role of the appellants can be said to have begun with the recovery of Maruti Van bearing number MFC 1972 near the gate of Siemens factory at Worli. This car was abandoned by the conspirators,

viz., PW-2, A-57, Javed Chikna, Bashir Khan and Babloo when they were on their way to the Bombay Municipal Corporation Office on 12.03.1993. The statement of PW 2 reveals that while they were on their way, they spotted a live detonator in the Van which exploded as soon as it was thrown outside the Van. This explosion scared the conspirators and they abandoned the Van near the gate of Siemens factory at Worli. This Van was then spotted by the Security Guards of the factory and was reported to the police and several items were recovered from the Van including its registration documents. This ultimately led the police to the flat of Rubina Suleman Memon (A-8), owner of the said Van, at Al-Hussaini building.

Recovery of abandoned Maruti Van No. MFC 1972 near Siemens Factory

13) It is relevant to note that the Maruti Van bearing number MFC 1972 recovered from outside the gate of Siemens factory at Worli on 12.03.1993 belonged to Rubina Suleman Memon (A-8). The prosecution examined PW-415, who was the Security Guard, posted at the said factory who noticed the abandoned vehicle. PW-371, a Police Officer, reached the spot and prepared a spot panchnama (Exhibit No. 190) in the presence of a panch witness Narayan D. More (PW-46) mentioning the recovery of rifles, hand grenades, and cartridges from the said vehicle when it was opened up using a hook by Mr. Nandkumar Anant Chaugule (PW-444), officer of the Bomb Detection and Disposal Squad (BDDS). The following prosecution witnesses also deposed with regard to the same in the following manner:-

Deposition of Mohd. Usman Jan Khan (PW-2)

The deposition of PW-2 reveals as under:-

(i) PW-2 along with Javed Chikna, Shaikh Ali Shaikh Umar (A-57), Bashir Khan (AA) and Babloo, left in a Maruti car bearing number 1972 on 12.03.1993 from the house of Tiger Memon towards BMC building and the said car was laden with explosives.

(ii) PW-2 and other co-accused persons parked the said Maruti Van at the gate of Siemens factory when a live detonator exploded in the Van as soon as it was thrown outside the car.

(iii) PW-2 further deposed that they left the hand grenades, rifles, detonators and magazines in the Maruti car parked outside the said factory.

Deposition of Divakar Ramakwal Mishra (PW-415)

On 12.03.1993, PW-415 was the Security Watchman on duty at Siemens Factory, Worli on 12.03.1993. In his deposition dated 21.08.1998, he reveals as under:

(i) PW-415 saw the Maruti van parked outside the rear gate of the Company at around 6:30 pm.

(ii) His companion Sarabjit Singh lodged the complaint with the police regarding the abandoned vehicle. The Police arrived on the spot within an hour.

Deposition of Narayan D. More (PW-46)

PW-46 acted as a panch witness to the recoveries made from the said Maruti Van on 12.03.1993. In his deposition dated 19.02.1996, he reveals as under:

(i) PW-46 noticed 2 plastic bags in the Van. One bag was opened and was found to contain 7 rifles. The second bag was containing 4 bombs and 14 magazines; and

(ii) PW-46 also noticed two white bags on the front row of the Van and a bag of dates, water bottles etc.

Exhibit 190 is the spot panchnama prepared by the police documenting recoveries from the said Maruti Van. It shows PW-46 as a panch witness and confirms recovery of rifles, hand grenades, magazines, dates and water bottles from the Maruti Van bearing number MFC 1972 near Siemens factory gate.

Deposition of Dinesh Parshuram Kadam (PW-371)

PW-371 was working as a Detection Officer at Worli Police Station on 12.03.1993. He deposed as under:-

(i) After receiving information, he went to Siemens factory on 12.03.1993 and saw a Maruti Van bearing No. MFC 1972;

(ii) He further deposed that 2 black bags were found from the Van containing rifles, hand grenades and magazines. PW-371, thereafter, lodged an FIR at Worli Police Station; and
(iii) He further deposed that the registration details of the Van revealed that the Van was in the name of Rubina Suleman Memon (A-8) residing at Al-Hussaini building.

Deposition of Nandkumar Anant Chaugule (PW-444)

PW-444 was the officer of BDDS. He deposed as under:-

(i) PW-444 received information of a suspicious Maruti van parked behind Siemens Factory at Worli.
(ii) He opened the door of the Maruti Van using a rope and a hook and found 2 black bags; and
(iii) The said bags were found to be containing AK-56 rifles, 4 hand grenades and magazines.

Deposition of Sadanand Narayan Naik (PW-370)

At the relevant time, PW-370 was an employee of the Regional Transport Office, Bombay. In his deposition dated 06.07.1998, he reveals as under:

(i) In the court, he recognized the entries made in the Registration Register maintained by the RTO in respect of vehicle number MFC 1972.
(ii) PW-370 had also prepared a true copy of the entries in the Register on 26.07.1993 on the request of police officials.

Exhibit Nos. 1292 and 1292-A are the true copies of the Register maintained by RTO in respect of Maruti vehicle bearing number MFC 1972. The said Exhibits clearly show that Rubina Suleman Memon (A-8), resident of Al-Hussaini building, is the owner of the said Maruti car.

Deposition of Waman Ramchandra Kulkarni (PW-662)

PW-662, in his deposition dated 03.05.2000, reveals that he wrote a letter to the RTO dated 23.07.1993 (Exhibit 2433) seeking information in respect of the ownership of several vehicles including vehicle number MFC 1972, which was abandoned by accused persons and was seized by the police on 12.03.1993 outside the Siemens Factory.

14) The recoveries made from the Maruti Van bearing No. MFC 1972 were forwarded to the Chemical Analyser vide forwarding letter Exhibit 2439 who confirmed in his report (Exhibit 2439-A) the presence of hand grenades amongst the recovered items. Similarly, his report dated 21.04.1993, Exhibit No. 2440-A also confirmed one Chinese Type 56-1 assault rifle and cartridges which were recovered from the said Maruti Van on 12.03.1993. Further, FSL Report (Exhibit No. 2440-C) clearly reveals that the name "WAH NOBLE (PVT.) LTD. WAH CANTT." was inscribed on the cardboard boxes recovered at Al-Hussaini. Francis Xavier Xaxa (PW-435), an Indian national, working with the Ministry of External Affairs and attached with the Indian Consulate at Islamabad until 1995, has stated that a company by name "Wah Noble (Pvt.) Limited" is listed as a manufacturer of explosives in the directory compiled by the Rawalpindi Chamber of Commerce and Industry with its office at Wah Cantt., Pakistan. It is, therefore, clear that the accused persons were carrying hand grenades, cartridges and assault rifles in the Maruti van owned by Rubina Suleman Memon (A-8) on 12.03.1993.

15) It was contended by the appellants/accused that liability cannot be imputed to A-8 for merely being the owner of the vehicle used by the conspirators for committing terrorist acts. It is pointed out by the prosecution that this factor was considered and rejected by the Designated Court in Para 48, Part 30 wherein it was held that:

> "In the same context, the further defence submission that A-8 was at Dubai since August, 1992 and as such she cannot be held liable for such a user of the van also does not appeal to the mind. A fact cannot be lost sight of that the said movable property was standing in the name of A-8. Even accepting that A-8 was then at Dubai, still the possession of the said van will be required to be with her. In view of the same, if the said van was used for such nefarious activities then the same would lead to a logical conclusion of such a user could not have been made without her permission of her connivance. Since A-8 having not tried to give any explanation for explaining the said facet clearly reveals that she cannot escape the liability accruing due to van standing in her name being used for such a nefarious

activity."

We are in agreement with the said conclusion.

Recoveries from Al-Hussaini building after the blasts

16) The abandoned Maruti car bearing number MFC 1972 which was recovered from outside the gate of Siemens factory at Worli on 12.03.1993 led the police to the flat of Rubina Suleman Memon (A-8) at Al-Hussaini building since the car belonged to her. The Police officials also inspected Flat Nos. 26 and 22 at Al-Hussaini building and recovered several articles including Rs. 4 lacs in cash, jewellery, slippers, carpet pieces with traces of RDX and keys to the abandoned scooter containing explosives found at Naigaon cross road vide panchnama Exhibit No. 337 in the presence of panch witnesses, viz., Uday Narayan Vasaikar (PW-67) and Sambaji Damodar Sawant. The following witnesses deposed with regard to the same:-

Deposition of Uday Narayan Vasaikar (PW-67)

PW-67 was the panch witness to the recoveries made at Flat No. 26 of Al-Hussaini building on 12.03.1993. In his deposition dated 26.06.1996, he reveals as under:

(i) PW-67 described that Flat No. 27 had a spiral staircase which led to a flat on the 5th floor below.

(ii) He further deposed that Rs. 4,00,000/- in cash and jewellery was recovered from the said apartment.

(iii) The police recovered a green carpet and slippers with black stains as Article Nos. 239-C and 238-B, respectively from Flat No. 22 on the 5th floor. Further, a set of keys (Article 245-B(i)), including a scooter key number 449 was recovered.

(iv) In the Court, PW-67 recognized the spot panchnama (Exhibit No. 337) as accurate.

The evidence of PW-67, therefore, corroborates with the evidence of Police Officer Pharande and the spot panchnama Exhibit No. 337 in material terms and, specifically, insofar as recording of recoveries made is concerned.

Deposition of Homi Sorabji Irani (PW-553)

PW-553 was in-charge of the investigation regarding the scooter recovered at Naigaon cross road containing explosives. On 03.07.1993, PW-553 handed over the keys of the scooter recovered from Al-Hussaini building to PW-546 for verification.

Jayant Ramchandra Sarmokaddam (PW-546)

PW-546, a police officer, verified on 03.07.1993 that the keys recovered from Flat No. 22 at Al-Hussaini building could be applied to the abandoned scooter seized by the police bearing number MH-04-Z-261 from Naigaon cross road containing explosives and prepared a panchnama being Exhibit No. 363 recording the same. Shaikh Sharfu (PW-69) was the scooter mechanic who applied the keys to the scooter in the presence of panch witness Mohd. Hussain Noor (PW-68).

Recovery of RDX traces from Flat Nos. 22, 25 and 26 at Al-Hussaini Building

Deposition of Manohar Bhalchandra Tandel (PW-56)

17) PW-56 was the panch witness to the recoveries made on 12.03.1993 from the Al-Hussaini building by the police and Chemical Analyser. The evidence of PW-56 reveals that black stains were found on the walls of Flat No. 26 and staircase leading to the 7th floor and at the staircase plywood at Al-Hussaini building which were scraped using wet cotton swabs by Chemical Analyser and collected as evidence in plastic bottles. Articles 169-A and 170-A were the cotton swabs used for taking the scrapping as mentioned above. Article 173-C are the pieces of plywood which were cut off from the ceiling portion outside the left side at Al-Hussaini. The recovery of black RDX traces made at Al-Hussaini building was recorded in panchnama marked as Exhibit No. 243 and corroborates with the evidence of panch witness PW-56.

Recoveries made from the garage and compound of Al-Hussaini building

Deposition of Nitin Narayan Mehar (PW-47)

18) PW-47 was the panch witness to the recoveries made from the garage allotted to Flat No. 26 of the said building on 13.03.1993 and recorded the recovery of a safe marked as Article 113 in the spot panchnama marked as Exhibit No. 192 On 15.03.1993, the safe was opened and watches worth Rs. 2,00,000/-, jewellery and ornaments worth Rs. 41,00,000/- and cash were recovered and the recoveries were recorded in a panchnama marked as Exhibit No. 193.

Deposition of Ganesh Shankar Rao (PW-48)

PW-48 was a jeweller by profession and was called to Mahim police station on 15.03.1993 to examine the jewellery and the ornaments recovered from the safe (Article 113) found in the garage of Flat No. 26 of Al-Hussaini building on 13.03.1993. Duttanad Ramkrishna Ravankar (PW-49), a goldsmith by profession, was also called to the Mahim police station on 15.03.1993 to examine the gold ornaments and the jewellery found in the steel safe recovered from the garage at Al-Hussaini building. Khalid Salam Arab (PW-40) was the key maker who made the keys to open the steel safe at Mahim police station on 15.03.1993. It is, therefore, clear that the evidence of PWs-48, 49 and 50 corroborates with the evidence recorded in panchnama Exhibit No. 193 insofar as opening of the steel safe and recovery of valuables therein is concerned.

Deposition of Esamoddin Zainoddin Sayed (PW-555)

PW-555 was a police officer attached with the Mahim police station as API. PW-555 was approached by the guard of Al-Hussaini building on 21.03.1993 and, thereafter, he went to the said building and recorded the recoveries made in panchnama marked as Exhibit No. 214 in the presence of panch witnesses Leonelson D'Souza (PW-52) and Yakub Yasin.

Depositon of Leonelson D'Souza (PW-52)

PW-52 was a resident of Al-Hussaini building in March 1993 and agreed to act as a panch witness in respect of the items recovered from the compound of the said building on 21.03.1993. He deposed as under:-

(i) The recovered items included 31 gunny sack pieces, 25 folded cardboard boxes having marking of "Packric Packages Ltd. - Lahore Containers", 34 oil stained white clothes and some plastic bags.

(ii) He further deposed that the recoveries were recorded in a panchnama marked as Exhibit No. 214.

The evidence of PW-52, therefore, corroborates with the evidence of PW-555 and the panchnama Exhibit No. 214.

19) The prosecution submitted that the recoveries made from the flats and garages of the Memons' at Al-Hussaini building establish that the said building was the nucleus of the criminal conspiracy to carry out explosions in Bombay on 12.03.1993 and for several months, since December 1992, meetings were held to prepare plans and hold discussions and lastly to fill RDX in vehicles, which were eventually used as bombs. It is further clear that the Memons' including A-3, A-4 and A-8, used to reside together in Flat Nos. 22, 25 and 26 at Al-Hussaini building and were present when several conspiratorial meetings took place in the said flats. It is, therefore, clear that A-3, A-4 and A-8 knew about the conspiracy and facilitated the commission of acts pursuant to the said conspiracy.

Arrest of the Appellants

20) It is submitted that the appellants arrived at the International Airport, New Delhi on 25.08.1994 and were arrested on the same day after preliminary investigation by Iqbal Singh Jaisingh Saroha (PW-674). H.M. Shiromani (PW-266) and S. Swarnasingh (PW-267), Immigration Officers, stamped the disembarkation cards of A-4, A-8 and A-3, respectively, at the time of their arrival at the Airport on 25.08.1994 and issued temporary residential permits marked as Exhibit Nos. 1111-A, 1106-A, and 1107-A to A-3, A-4, and A-8, respectively, on the said date for their stay in India. The above fact is further clarified by the deposition of the following prosecution witnesses which are as follows:-

Deposition of Iqbalsingh Jaisingh Saroha (PW-674)

PW-674, in his deposition dated 29.06.2000, reveals as under:

(i) On 25.08.1994, PW-674 got information that members of Tiger Memon and Dawood Ibrahim's gang were arriving at Delhi Airport to carry out terrorist activities.; and

(ii) PW-674, thereafter, arrested the family members who arrived at New

Delhi Airport on 25.08.1974 at 1100 hrs. He arrested the family members including A-3, A-4 and A-8.

21) Exhibit No. 2500 is the seizure memo prepared by PW-674 at the time of arrest of A-4. The following items were seized from A-4 on 25.08.1994:

(i) Pakistani passport bearing No. AA 763654 dated 12.04.1993 issued in the name of Imran Ahmed Mohd. bearing the photograph of Yusuf Abdul Razak Memon (A-4);

(ii) Pakistani photo identity card bearing No. AZ 021271510-91-224164 in the name of Imran Ahmed Mohd. bearing the photo of A-4; and

(iii) Temporary residential permit issued for Pakistani nationals duly stamped at New Delhi Airport on 25.08.1994 in the name of Imran Ahmed Mohd.

22) Exhibit No. 2501 is the seizure memo prepared by PW-674 at the time of arrest of Essa Abdul Razak Memon (A-3). The following items were seized from A-3 on 25.08.1994:

(i) Pakistani passport bearing No. AA-763650 dated 12.04.1993 in the name of Akhtar Ahmed Mohd. bearing the photograph of A-3; and

(ii) Temporary residential permit issued for Pakistani nationals duly stamped at New Delhi Airport on 25.08.1994 in the name of Akhtar Ahmed Mohd.

23) Exhibit No. 2505 is the seizure memo prepared by PW-674 at the time of arrest of Rubina Suleman Memon (A-8). The following items were seized from A-8 on 25.08.1994:

(i) Pakistani passport bearing No. AC 001087 dated 27.04.1994 in the name of Mrs. Mehtab bearing the photograph of A-8;

(ii) Pakistani photo identity card bearing No. BQ 526267/509-69-270214 in the name of Mrs. Mehtab dated 29.03.1994 bearing the photo of A-8; and

(iii) Temporary residential permit issued for Pakistani nationals duly stamped at New Delhi Airport on 25.08.1994 in the name of Mrs. Mehtab Aftab.

24) It is, therefore, clear that the recovery of Pakistani identity cards and Pakistani passports from the appellants at the time of their arrest at New Delhi Airport clearly prove that the appellants had relocated to Dubai from Bombay just prior to the blasts on 12.03.1993 and, thereafter, to Pakistan.

25) The prosecution also brought to our notice that the conduct of the appellants after the blasts further establishes that the appellants did not intend to co-operate with the investigation authorities in India and instead travelled on a holiday to Bangkok from Karachi which is evident from the passport entries made in Pakistani passports recovered from Yakub Abdul Razak Memon (A-1) at the time of his arrest at New Delhi Railway Station. After travelling to Bangkok, the appellants arrived at New Delhi Airport via Dubai where they were arrested on 25.08.1994 by PW-674.

26) Pakistani passport No. AA-763650 in respect of Akhtar Ahmed Mohd. (A-3) shows that the said passport holder left Karachi on 16.04.1993 and reached Bangkok on the same day itself. The said passport holder left Bangkok on 27.04.1993. There is no arrival stamp of any country on the said passport. The said passport holder again left Karachi on 17.06.1994 and reached Dubai on the same day. Again, the said passport holder left Dubai on 25.08.1994 and reached India on the same day itself (Exhibit No. 1553). It is clear from the photo on the passport that Akhtar Ahmed Mohd. and Essa @ Anjum Razak Memon (A-3) are one and the same persons.

27) Exhibit No. 1551 is the Pakistani passport No. AA-763654 in respect of Imran Ahmed Mohammed (A-4) which reveals that the said passport holder left Karachi on 17.04.1993 and reached Bangkok on the same day. The said passport holder left Bangkok on 29.04.1993. There is no arrival stamp of any country on the said passport. Again, the said passport holder left Karachi on 20.06.1994 and entered Dubai on the same day. The said passport holder left Dubai on 28.06.1994. There is no arrival stamp of any country on the passport. Again, the said passport holder left Karachi on 25.07.1994 and reached Dubai. The said person left Dubai on 10.08.1994 and re-entered Dubai on 11.08.1994. Again, the said passport holder left Dubai on 25.08.1994 and arrived at New Delhi on the same day. From the Indian Passport of Yusuf Abdul Razak Memon and Pakistani passport in respect of Imran Ahmed Mohd., it is clear that Imran Ahmed Mohd. and Yusuf Abdul Razak Memon are one and the same persons.

28) Exhibit No. 1562 is the Pakistani Passport No. AA-763653 in respect of Mrs. Mehtab Aftab Ahmed (A-8) which shows that Mrs. Mehtab Aftab Ahmed left Karachi on 16.04.1993 and reached Bangkok on the same day. Again, she

left Bangkok on 27.04.1993. There is no arrival stamp of any country on the said passport. Pakistani Passport No. AC-001087 in respect of Mrs. Mehtab Aftab Ahmed shows that she left Karachi on 25.07.1994 and entered Dubai on the same day. She left Dubai on 10.08.1994 and entered Dubai on 11.08.1994. Again, she left Dubai on 25.08.1994 and entered India on the same day i.e., 25.08.1994. The said passports show that Rubina Suleman Memon (A-8) and Mrs. Mehtab Aftab Ahmed are one and the same persons.

Other evidence against the Appellants

Deposition of Rashid Fakir Mohd. Khatri (PW-417)

29) PW-417 was an Accounts Assistant at Memon Mehta Associates, a firm of Chartered Accountants in which Yakub Abdul Razak Memon (A-1) was a partner. He deposed that Essa @ Anjum (A-3) is the brother of A-1 and was looking after the business of M/s Tejarath International in Bombay in 1993.

It is pertinent to note here that A-1 was charged and convicted at head secondly for arranging finance from the funds of M/s Tejarath International for achieving the objective to commit terrorist acts. The evidence on record establishes the involvement of Tejarath International in financing the air tickets of several co-accused persons.

Deposition of Lakharaju Narsinhasai Rao (PW-672)

PW-672 was a police officer. In his deposition dated 20.6.2000, he deposed that he recovered the details of bank accounts of Rubina Suleman Memon (A-8) from the HSBC Bank, Bandra Branch and that of Essa @ Anjum Abdul Razak Memon (A-3) from the Development Co-operative Bank, Mahim Branch. It is pertinent to note here that M/s Tejarath International was also having an account with the Development Co-op. Bank, Mahim. As already discussed above, evidence of PW-417 clearly establishes that A-3 was involved with the management of M/s Tejarath International, a firm whose funds were involved in financing the conspiratorial activities such as booking of air tickets.

Appeal by the State of Maharashtra through CBI:

Criminal Appeal No. 419 of 2011

The above-said appeal has been filed by the State against acquittal of A-2, A-6, A-7 and A-8 of the charges framed against them. Except A-8, the CBI has not pressed the same against A-2, A-6 and A-7 before this Court, who was acquitted of (i) a part of charge stated in clause (a) at head secondly framed against her and (ii) charge stated in clause (b). After careful examination of all the materials placed, we are of the view that in the absence of any positive evidence, A-8 cannot be convicted for the acts done and mentioned hereinabove (part of charge mentioned at head secondly) and the Designated Court has rightly acquitted her for the same. In the light of the above, the appeal of the State is liable to be dismissed.

Sentence:

30) The Designated Court has awarded rigorous imprisonment for life to each of the appellants for commission of offences under section 3(3) of TADA and under Section 120-B of IPC. The prosecution submitted that the appellants were given full opportunity to defend themselves on the question of quantum of sentence.

Essa @ Anjum Abdul Razak Memon (A-3)

A-3 filed a statement dated 14.09.2006 on the quantum of sentence, which is Exhibit 2942. A-3, inter alia, stated that:

(i) He was a B. Com. Student in the year 1993 and the flat was purchased by his father (deceased) and he was only staying in it and was not the owner of the same;
(ii) He has been in custody for 12 years; and
(ii) He had serious medical ailments including brain tumor and diabetes.

Yusuf Abdul Razak Memon (A-4)

A-4 filed a statement dated 15.09.2006 on the quantum of sentence which is Exhibit 2944. A-4, inter alia, stated that:

(i) He is suffering from chronic schizophrenia;
(ii) The Flat at Al-Hussaini was purchased by his father jointly with him since his father was managing his savings; and
(iii) He has no criminal background.

Rubina Suleman Memon (A-8)

A-8 filed a statement dated 14.09.2006 on the quantum of sentence which is Exhibit 2943. A-8, inter alia, stated that:

(i) The vehicle bearing No. MFC 1972 was purchased by her father-in-law and she was unaware about what had happened to the vehicle after she left for Dubai to be with her husband in August 1992;
(ii) She was not in India during August 1992 - August 1994; and
(iii) She has two children.

31) The Designated Court has considered all the abovesaid factors in respect of the appellants. The evidence on record establishes that the A-8 was aware that the vehicle owned by her (i.e. MFC 1972) was being used for terrorist acts by Tiger Memon and his associates. It is further established that Flat Nos. 22, 25 and 26 at Al-Hussaini building, where members of the Memons' family resided jointly, were the nucleus of the criminal conspiracy as they were the locations where Tiger Memon and Yakub Memon met with several other co-accused persons during the period of the conspiracy. Further, the arms and explosives smuggled into India for the purpose of the conspiracy were also kept at the said building and lastly RDX was filled in the vehicles in and outside the garages allocated to the Memons' at Al-Hussaini building which were used/planted as bombs at various places on 12.03.1993 by all the conspirators.
32) Further, it is pertinent to note here that the evidence on record reveals that the Maruti car used by A-3 was:
(a) driven by several co-accused persons including A-15, A-46 and A-11 to the landing point at Shekhadi from Bombay for landing of weapons in February, 1993;
(b) loaded with RDX on the night of 11.03.1993 at Al-Hussaini Building; and
(c) parked on 12.03.1993 at the Lucky Petrol Pump by A-16 and PW-2 near Shiv Sena Bhawan which exploded killing 4 persons and injuring 38 others.
The above mentioned evidence establishes that the white car driven by A-3 was used for terrorist activities by Tiger Memon and other co-accused persons.
33) Further, A-3, A-4, and A-8 resided jointly at these flats where Tiger Memon, Yakub Memon (A-1) and their associates hatched the criminal conspiracy to carry out multiple explosions in Bombay. The conduct of the appellants in not reporting any of these activities to the police and the fact that A-3 and A-4 departed from India on 11.03.1993 in itself is an incriminating circumstance to be used against the appellants. None of the appellants responded to the proclamation requiring presence issued by the Designated Court, which was given wide publicity.
34) The evidence on record establishes that the appellants facilitated the commission of terrorist acts as defined in Section 3(1) of TADA by conniving with Tiger Memon and his associates and permitting them to use their flats and vehicles for the purposes of criminal conspiracy. The actions of the appellants squarely fall within Section 3(3) of TADA insofar as the appellants have facilitated and abetted the conduct of terrorist acts by Tiger Memon and his associates.
35) After the blasts that took place in Bombay on 12.03.1993, the Memons' were living together in Dubai. They never disclosed the connection of Tiger with the blasts to anyone. Their conduct of living together after fleeing from Bombay and not informing about these blasts to any of the concerned authorities at Indian Embassy establishes that they were also involved in the conspiracy to commit the bomb blasts.

36) After the blasts, the Memons' fled to Pakistan from Dubai and there is evidence that in Pakistan they had obtained Pakistani Passports and National Identity Cards in assumed names. The Memons' and their family members were leading a comfortable and luxurious life after the blasts. They had acquired properties, started business in the name and style of M/s Home Land Builders, acquired fictitious qualification certificates, driving licences, etc, all of which established that they had chosen a comfortable life in Pakistan and were determined not to return to India in their original identity. The above-said facts clearly establish that the members of Memons' family were connected with the Bombay Bomb Blasts.
37) All the members of Memons' family were declared Proclaimed Offenders by the Designated Court, Bombay. The rewards were also declared in Indian as well as in foreign currency for their arrest. Despite that, they did not surrender. Instead, the Memons' travelled to Bangkok and Singapore from Karachi for holiday in assumed names on Pakistani Passports during April, 1993. They have not taken any steps to surrender before Indian

Authorities or Thailand Authorities on their arrival to Bangkok and Singapore after having come to know about the blasts engineered by Tiger Memon nor made any attempt to return to India openly if they had felt that bomb blasts are offences committed in India. This conduct clearly establishes that they were aware of the blasts that were engineered by Tiger Memon who was living with them right from the time of blasts, i.e., 12th March 1993, in Dubai, Pakistan and other places. Their documents for travel to Bangkok and Singapore from Karachi show that they have travelled on Pakistani Passports using fake names. This conduct also establishes their culpability. It is also in evidence that huge amount of jewellery and cash which was abandoned by the members of Memon's family was recovered from the Al-Hussaini building when they hurriedly left Bombay just before the blasts. This is also a proof that all the Memons' were fully aware of the blasts and their conduct in fleeing away very clearly establishes that they were aware of the blasts and association of Tiger Memon with the blasts.

38) In view of the materials placed on record by the prosecution and the ultimate analysis of the Designated Court, we fully agree with the conviction and sentence imposed upon the appellants, consequently, the appeals filed by the appellants are liable to be dismissed.

Criminal Appeal Nos. 1127-1128 of 2007

Sardar Shahwali Khan (A-54) ..... Appellant(s)

vs.

The State of Maharashtra
through STF, CBI Mumbai ..... Respondent(s)

39) Mr. Jaspal Singh, learned senior counsel appeared for the appellant (A-54) and Mr. Mukul Gupta, learned senior counsel duly assisted by Mr. Satyakam, learned counsel for the respondent-CBI.

40) The instant appeals are directed against the final judgment and order of conviction and sentence dated 24.11.2006 and 06.06.2007 respectively, whereby the appellant (A-54) has been convicted and sentenced to rigorous imprisonment (RI) for life by the Designated Court under TADA for the Bombay Bomb Blast Case, Greater Bombay in B.B.C. No. 1/1993.

Charges:

41) A common charge of conspiracy was framed against all the co-conspirators including the present appellant (A-54). The material portion of the first charge against the appellant (A-54) is as follows:

> "During the period from December, 1992 to April, 1993 at various places in Bombay, District Raigad and District Thane in India and outside India in Dubai (U.A.E.) and Pakistan, entered into a criminal conspiracy and/or were members of the said criminal conspiracy whose object was to commit terrorist acts in India and that you all agreed to commit following illegal acts, namely, to commit terrorist acts with an intent to overawe the Government as by law established, to strike terror in the people, to alienate sections of the people and to adversely affect the harmony amongst different sections of the people, i.e. Hindus and Muslims by using bombs, dynamites, hand grenades and other explosive substances like RDX or inflammable substances or fire-arms like AK-56 rifles, carbines, pistols and other lethal weapons, in such a manner as to cause or as likely to cause death of or injuries to any person or persons, loss of or damage to and disruption of supplies of services essential to the life of the community, and to achieve the objectives of the conspiracy, you all agreed to smuggle fire-arms, ammunitions, detonators, hand grenades and high explosives like RDX into India and to distribute the same amongst yourselves and your men of confidence for the purpose of committing terrorist acts and for the said purpose to conceal and store all these arms, ammunitions and explosives at such safe places and amongst yourselves

and with your men of confidence till its use for committing terrorist acts and achieving the objects of criminal conspiracy and to dispose off the same as need arises. To organize training camps in Pakistan and in India to import and undergo weapons training in handling of arms, ammunitions and explosives to commit terrorist acts. To harbour and conceal terrorists/co-conspirators, and also to aid, abet and knowingly facilitate the terrorist acts and/or any act preparatory to the commission of terrorist acts and to render any assistance financial or otherwise for accomplishing the object of the conspiracy to commit terrorist acts, to do and commit any other illegal acts as were necessary for achieving the aforesaid objectives of the criminal conspiracy and that on 12.03.1993 were successful in causing bomb explosions at Stock Exchange Building, Air India Building, Hotel Sea Rock at Bandra, Hotel Centaur at Juhu, Hotel Centaur at Santacruz, Zaveri Bazaar, Katha Bazaar, Century Bazaar at Worli, Petrol Pump adjoining Shiv Sena Bhavan, Plaza Theatre and in lobbing handgrenades at Macchimar Hindu Colony, Mahim and at Bay-52, Sahar International Airport which left more than 257 persons dead, 713 injured and property worth about Rs.27 crores destroyed, and attempted to cause bomb explosions at Naigaum Cross Road and Dhanji Street, all in the city of Bombay and its suburbs i.e. within Greater Bombay. And thereby committed offences punishable under Section 3(3) of TADA (P) Act, 1987 and Section 120-B of IPC read with Sections 3(2)(i)(ii), 3(3)(4), 5 and 6 of TADA (P) Act, 1987 and read with Sections 302, 307, 326, 324, 427, 435, 436, 201 and 212 of Indian Penal Code and offences under Sections 3 and 7 read with Sections 25 (1A), (1B)(a) of the Arms Act, 1959, Sections 9B (1)(a)(b)(c) of the Explosives Act, 1884, Sections 3, 4(a)(b), 5 and 6 of the Explosive Substances Act, 1908 and Section 4 of the Prevention of Damage to Public Property Act, 1984 and within my cognizance."

In addition to the above-said principal charge of conspiracy, the appellant was also charged on the following counts:

At head secondly; The appellant (A-54) was also charged for committing an offence punishable under Section 3(3) of TADA by committing the following overt acts:-

(a) He participated in the training in handling of arms, ammunitions and explosives at Borghat and Sandheri along with Tiger Memon and other co-conspirators;

(b) He participated in the landing and transportation of arms, ammunitions and explosives which were smuggled into India at Shekhadi;

(c) He attended conspiratorial meetings at the residence of Babloo @ Nazir Ahmed Anwar Shaikh and Mobina @ Baya Moosa Bhiwandiwala (A-96) for making plans to commit terrorist act and he also attended conspiratorial meeting at Taj Mahal Hotel;

(d) He surveyed and conducted reconnaissance of the Stock Exchange Building and B.M.C. Building along with A-44, PW-2 and Javed Chikna (AA) for causing explosions there; and

(e) He participated along with co-conspirators in loading explosives like RDX fitted with time-device detonators in various vehicles in the preparation of vehicle bombs in the intervening night of 11/12th March, 1993.

42) The charges mentioned above were proved against the appellant (A-54).

The appellant has been convicted and sentenced for the above said charges as under:

Conviction and Sentence:

i) The appellant has been convicted for the offence of conspiracy read with the offences described at head firstly and sentenced to RI for life along with a fine of Rs. 50,000/-, in default, to further undergo RI for 1 year. (charge firstly)

ii) The appellant has also been convicted under Section 3 (3) of TADA except clause (b) and sentenced to RI for life along with a fine of Rs. 50,000/-, in default, to further undergo RI for 1 year. (charge secondly)

Evidence:

43) The evidence against the appellant (A-54) is in the form of:

i) confessions made by co-accused;

ii) testimony of prosecution witnesses; and

(iii) documentary evidence on record.

Confessional Statements of co-accused:

Confessional Statement of Abdul Gani Ismail Turk (A-11)

44) Confessional statement of A-11 under Section 15 of TADA has been recorded on 15.04.1993 and 18.04.1993 by Shri Prem Krishna Jain (PW-189), the then DCP, Zone X, Bombay. The said confession reveals as under:

(i) The appellant (A-54) was present in the house of Mobina (A-96) along with Tiger Memon, Javed Chikna and other co-conspirators.

(ii) The appellant (A-54) took weapons training which was imparted by Tiger Memon.

Confessional Statement of Bashir Ahmed Usman Gani Khairulla (A-13)

Confessional statement of A-13 under Section 15 of TADA has been recorded on 16.05.1993 (10:30 hrs.) and 18.05.1993 (17:15 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then D.C.P. Zone III, Bombay. The said confession reveals as under:

(i) The appellant (A-54), along with co-accused persons, was present on the 7th floor of a building behind Bhabha Hospital.

(ii) The appellant (A-54), on the instructions of Tiger Memon, administered oath to other co-accused persons that they will combat 'Jehad' and will not disclose anything to anybody.

(iii) The appellant (A-54) attended training in handling of arms and ammunitions imparted by Tiger Memon.

(iv) The appellant (A-54) was present at the residence of Tiger Memon on 11.03.1993 around 11 p.m.

Confessional Statement of Mohd. Iqbal Mohd. Yusuf Shaikh (A-23)

Confessional statement of A-23 under Section 15 of TADA has been recorded on 20.05.1993 (1000 hrs.) and 22.05.1993 (10:00 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. A-23 made the following references with regard to the appellant in his confession:

(i) The appellant (A-54), along with co-accused persons, was present on the 7th floor of a building behind Bhabha Hospital.

(ii) The appellant (A-54), along with other co-accused persons, was administered oath by Tiger Memon that they will combat 'Jehad'.

(iii) The appellant (A-54), along with other co-accused persons, participated in the training of arms and ammunitions and explosives imparted by Tiger Memon

(iv) The appellant (A-54), along with other co-accused persons, was present in a meeting held at a flat in Bandra where Tiger Memon held discussions.

Confessional Statement of Shahnawaz Abdul Kadar Qureshi (A-29)

Confessional statement of A-29 under Section 15 of TADA has been recorded on 18.05.1993 (18:30 hrs.) and 21.05.1993 (14:45 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. In his confession, A-29 stated that the appellant (A-54), along with other co-accused persons, was present at the house of Tiger Memon on 11.03.1993.

Confessional Statement of Zakir Hussain Noor Mohd. Shaikh (A-32)

Confessional statement of A-32 under Section 15 of TADA has been recorded on 16.05.1993 (11:25 hrs.) and 19.05.1993 (17:30 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. In his

confession, A-32 stated that the appellant, along with other co-accused persons, was present at Al-Hussaini building on the night intervening 11/12.03.1993.

Confessional Statement of Mohd. Mushtaq Moosa Tarani (A-44)

Confessional statement of A-44 under Section 15 of TADA has been recorded on 26.05.1993 (16:55 hrs.) and 22.05.1993 (10:00 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. In his confession, A-44 stated that the appellant (A-54), along with him, Javed Chikna, PW-2 and Tiger Memon did reconnaissance of the BMC building.

Confessional Statement of Nasim Ashraf Shaikh Ali Barmare (A-49)

Confessional statement of A-49 under Section 15 of TADA has been recorded on 16.05.1993 (09:30 hrs.) and 18.05.1993 by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. In his confession, A-49 stated that on 09.03.1993 the appellant (A-54), along with other co-accused persons, was present in a flat at Bandra, Hill Road where Tiger Memon discussed his plans with them.

Confessional Statement of Shaikh Ali Shaikh Umar (A-57)

Confessional statement of A-57 under Section 15 of TADA has been recorded on 19.04.1993 (1200 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. In his confession, A-57 made the following references with regard to the appellant:

(i) The appellant (A-54) was a friend of Javed Chikna and he met Tiger Memon through him.
(ii) The appellant (A-54) went to Ajmer along with Javed Chikna and other accused persons.
(iii) The appellant (A-54), along with other co-accused persons, was present at Al-Hussaini Building on 11.03.1993.

Confessional Statement of Niyaz Mohd. @ Aslam Iqbal Ahmed Shaikh (A-98)

Confessional statement of A-98 under Section 15 of TADA has been recorded on 17.05.1993 (14:30 hrs.) and 20.05.1993 (11:30 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. In his confession, A-98 stated that the appellant, along with PW-2 and others, conducted reconnaissance of the BMC Building.

Confessional Statement of Parvez Mohd. Parvez Zulfikar Qureshi (A-100)

Confessional statement of A-100 under Section 15 of TADA has been recorded on 15.04.1993 (23:30 hrs.) and 17.04.1993 (17:00 hrs.) by Shri Sanjay Pandey (PW-492), the then DCP, Zone-VIII, Bombay. In his confession, A-100 stated that the appellant (A-54), along with other co-accused persons, was present at a flat in Bandra where Tiger Memon distributed Rs.5,000/- to each one of the accused persons.

45) A perusal of the confessional statements of all the above accused, viz., A-11, A-13, A-23, A-29, A-32, A-44, A-49, A-57, A-98 and A-100 clearly establish the fact that it corroborate with each other in material particulars with regard to the involvement of the appellant. After consideration of all the abovesaid confessional statements of the co-accused, the involvement of the appellant in the conspiracy is established inasmuch as:-

(i) The appellant participated in the training in handling of arms and ammunitions and explosives at Borghat and Sandheri along with Tiger Memon and other co-conspirators;
(ii) The appellant attended conspiratorial meetings wherein plans were chalked out to commit terrorist acts;
(iii) The appellant surveyed and conducted reconnaissance of the Stock Exchange Building and BMC building for causing explosions along with A-44, PW-2 and Javed Chikna (AA);
(iv) The appellant was present at Al-Hussaini building at the time when loading of explosives like RDX fitted with time device detonators in various vehicles was being done in the intervening night of

11/12.03.1993;

(v) The appellant was closely associated with Tiger Memon and on being asked by him, A-54 administered oath to other co-accused persons;

(vi) The appellant also took oath to take part in 'Jehad';

(vii) There was a close link between the appellant and Javed Chikna (AA), who had played a crucial and pivotal role in achieving the object of the conspiracy;

(viii) The appellant was fully aware and conscious of the fact that he was waging 'Jehad' and taking and administering of oath by him shows his intent and determination to cause damage and destruction; and

(ix) The appellant was fully aware and conscious of the consequences of his actions, and accordingly, played an important role in the entire conspiracy.

Deposition of Prosecution Witnesses:

46) Apart from the aforesaid evidence, the involvement and role of the appellant in the conspiracy, as stated above, is disclosed by the deposition of various prosecution witnesses which are as under:

Deposition of Mohd. Usman Jan Khan (PW-2)

After going through his entire evidence, we summarize his evidence with reference to the appellant (A-54) as under:

(i) He knows the appellant as 'Sardar';

(ii) He identified the appellant before the Court during dock proceedings;

(iii) He deposed that the appellant, along with other co-accused persons, was involved in planning, conspiring and training;

(iv) He deposed that on 04.03.1993, at Taj Mahal Hotel, Tiger Memon asked PW-2, Bashir, Javed Chikna to survey BMC building along with the appellant.

(v) On 05.03.1993, Bashir Khan administered oath to the accused that whatever they will do, will do for Islam and take revenge.

(vi) The appellant readily agreed to take revenge and offered to go to Pakistan for training;

(vii) PW-2, along with other co-accused, went to the house of the appellant;

(viii) On 07.03.1993, A-54 attended the meeting held by Tiger Memon at the residence of Shakil in which Tiger Memon organized separate groups;

(ix) A-54 also attended the meeting on 08.03.1993 at the residence of Babloo. He agreed to do the work assigned to him in the organized group where Tiger Memon selected the targets which were to be attacked.

(x) PW-2, Tiger Memon and other accused took A-54 to BMC building on 09.03.1993 where entry and exit points to the said building were shown for the purpose of attacking the BJP and Shiv Sena Councillors;

(xi) On 10.03.1993, A-54 attended the meeting at the residence of Shakil where separate groups were formed by Tiger Memon;

(xii) A-54 was present on the night of 11.03.1993 at Al-Hussaini Building.

Training at Sandheri and Borghat Districts:

Deposition of Harish Chandra Keshav Pawar (PW-105)

PW-105 is an eye-witness to the incident of firing. He deposed as under:

(i) At the relevant time, he was studying in 8th standard and was residing at Sandheri;

(ii) On 08.03.1993, at about 0900 hrs., an event occurred on the eastern side hillock to village Sandheri;

(iii) The said event was in connection with gun firing;

(iv) 10-11 persons participated in the said firing incident;

(v) Cardboard sheets were placed by the side of hillock;

(vi) 4/5 persons from the group of 8/10 persons were firing at the said cardboards using guns;

(vii) He deposed that he knew 3 persons from the group, namely, A-17, A-79 and A-78 (since deceased) as they were from Sandheri Village;

(viii) He was there for 20-25 seconds along with his friends. When Hamid Dafedar (A-78) noticed them standing, he threatened them to go otherwise they would be killed.

PW 105 is an eyewitness to the practice session which took place at the hillocks of Sandheri Village. He was thoroughly cross-examined by the defence and he withstood the rigorous cross-examination without being shaken. The evidence of PW-105 corroborates the fact that the training in fire arms was conducted at the hillocks of Sandheri and 10-11 persons participated in the said training.

Deposition of Rajaram Ramchandra Kadam (PW-106)

PW-106 is an eye-witness to the incident. In his evidence, he deposed as under:

(i) He is an agriculturist and resides at Sandheri;

(ii) On 08.03.1993, at about 09.30 a.m., he heard the sound of firing from the side of Chinchechammal;

(iii) He went to the said place and saw two men standing armed with guns and a cardboard target that was placed near the hillock;

(iv) He deposed that he knew 5 persons from the group as they were from Sandheri Village;

(v) He identified them before the Court as A-79, A-106, A-131, A-111 and A-78.

PW-106 is also an eye-witness to the training session which took place at the hillocks of Sandheri Village. Both these witnesses corroborate with each other on the fact that training in fire arms was conducted at the above-said place. These witnesses also corroborate the confessional statements insofar as the said training is concerned.

Deposition of Namdeo Pundlik Mahajan (PW-587)

PW-587 was a Constable attached with Goregaon Police Station, District Raigad at the relevant time. The witness deposed that:

(i) He inspected the site of the incident and collected 3 empties, 6 lead pieces, cardboard target, stones bearing the marks of hitting of bullets and a broken branch of tree.

(ii) The aforesaid articles were collected and seized by him in the presence of panchas and a panchnama was drawn.

(iii) He wrote a complaint which was registered by Head Constable.

The evidence of PW-587 further proves that firing took place at the hillocks of village Sandheri.

Deposition of Mahadeo Jadhav (PW-103)

PW-103 deposed about the seizures affected by the police at the hillocks of Village Sandheri on 29.03.1993.

47) Mr. Jaspal Singh, learned senior counsel for the appellant contended that there is, in fact, no evidence on record to prove his role in the entire conspiracy. On the other hand, mere perusal of the entire evidence as mentioned hereinabove makes it clear that there is sufficient evidence on record to show that the appellant actively participated in the attainment of the objects behind the conspiracy.

48) It is further contended on behalf of the appellant that his name is 'Sardar Shahwali Khan' and not 'Sardar' alone and none of the confessions actually refer to him as 'Sardar Shahwali Khan'. On perusal of the instant appeal, particularly, Memo of Parties filed by the appellant (A-54), it is clearly discernible that his name is 'Sardar Shahwali Khan S/o Shahwali Khan', therefore, his first name is 'Sardar' with father's name 'Shahwali' and surname 'Khan'.

49) From the materials relied on by the prosecution, it is established that:

(i) Pursuant to the conspiracy, the appellant participated in the training in handling of arms and ammunitions and explosives at Borghat and Sandheri along with Tiger Memon and other co-conspirators;

(ii) The appellant participated in various conspiratorial meetings at the residence of Babloo @ Nazir Ahmed Anwar Shaikh and Mobina @ Bayamoosa Bhiwandiwala (A-96) and was a part of the core group making plans;

(iii) The appellant surveyed and conducted reconnaissance of the Stock Exchange building and BMC building along with A-44, PW-2 and Javed Chikna (AA) which were the proposed targets of explosion; and

(iv) The appellant was present at Al-Hussaini building in the intervening night of 11/12th March, 1993, at the crucial time, when the activities like filling of RDX explosives in various vehicles were going on.

On the basis of the above said evidence, the charges framed against the appellant (A-54) have been fully proved beyond all reasonable doubt.

Sentence

50) We are also satisfied that the appellant was given full opportunity to defend himself on the question of quantum of sentence. The appellant filed a statement dated 27.11.2006 in which he prayed that the following factors may be considered while determining his sentence:

(i) He is the sole bread winner of his family;

(ii) He has been in custody for five years and five months; and

(iii) He has to look after his 90 years old father who is blind.

Conclusion:

51) The appellant has participated in various stages of the conspiracy from planning till execution. He was also present during the filling of RDX in the vehicles which were planted at various locations resulting in the death of hundreds of people and injuries to many. The crimes committed by the accused including the appellant (A-54) have shocked the conscience of the society. The blasts on 12.03.1993 have caused massive loss to life and property and were carried out in an organized and systematic manner in which the appellant (A-54) has played an active role.

52) In the light of the above, we are of the view that the conviction and sentence imposed by the Designated Court to the appellant (A-54) is

sustainable and justified, consequently, the appeals fail and are liable to be dismissed.

Criminal Appeal Nos. 1252-1253 of 2007

Ashrafur Rehman Azimulla Shaikh
@ Lallu (A-71) .... Appellant(s)

vs.

The State of Maharashtra .... Respondent(s)

WITH

Criminal Appeal No. 413 of 2011

The State of Maharashtra,
through CBI .... Appellant(s)

vs.

Ashrafur Rehman Azimulla Shaikh
@ Lallu (A-71) .... Respondent(s)

53) Mr. Prakash Sinha, learned counsel appeared for the appellant (A-71) and Mr. Mukul Gupta, learned senior counsel duly assisted by Mr. Satyakam, learned counsel for the respondent (CBI).

54) The appeals, i.e., Criminal Appeal Nos. 1252-1253 of 2007 are directed against the final judgment and order of conviction and sentence dated 03.11.2006 and 31.05.2007 respectively, whereby the appellant (A-71) has been convicted and sentenced to rigorous imprisonment (RI) for life by the Designated Court under TADA for the Bombay Bomb Blast Case, Greater Bombay in B.B.C. No.1/1993. Criminal Appeal No. 413 of 2011 filed by the CBI is directed against the acquittal of A-71 under the common charge framed at head firstly, i.e., conspiracy. For convenience, henceforth, we will refer accused (A-71) as appellant.

Charges:

55) A common charge of conspiracy was framed against all the co-conspirators including the appellant. The relevant portion of the said charge is reproduced hereunder:

> "During the period from December, 1992 to April, 1993 at various places in Bombay, District Raigad and District Thane in India and outside India in Dubai (U.A.E.) and Pakistan, entered into a criminal conspiracy and/or were members of the said criminal conspiracy whose object was to commit terrorist acts in India and that you all agreed to commit following illegal acts, namely, to commit terrorist acts with an intent to overawe the Government as by law established, to strike terror in the people, to alienate sections of the people and to adversely affect the harmony amongst different sections of the people, i.e. Hindus and Muslims by using bombs, dynamites, hand grenades and other explosive substances like RDX or inflammable substances or fire-arms like AK-56 rifles, carbines, pistols and other lethal weapons, in such a manner as to cause or as likely to cause death of or injuries to any person or persons, loss of or damage to and disruption of supplies of services essential to the life of the community, and to achieve the objectives of the conspiracy, you all agreed to smuggle fire-arms, ammunitions, detonators, hand grenades and high explosives like RDX into India and to distribute the same amongst yourselves and your men of confidence for the purpose of committing terrorist acts and for the said purpose to conceal and store all these arms, ammunitions and explosives at such safe places and amongst yourselves and with your men of confidence till its use for committing terrorist acts and achieving the objects of criminal conspiracy and to dispose off the same as need arises. To organize training camps in Pakistan and in India to import and undergo weapons training in handling of arms, ammunitions and explosives to commit terrorist acts. To harbour

and conceal terrorists/co-conspirators, and also to aid, abet and knowingly facilitate the terrorist acts and/or any act preparatory to the commission of terrorist acts and to render any assistance financial or otherwise for accomplishing the object of the conspiracy to commit terrorist acts, to do and commit any other illegal acts as were necessary for achieving the aforesaid objectives of the criminal conspiracy and that on 12.03.1993 were successful in causing bomb explosions at Stock Exchange Building, Air India Building, Hotel Sea Rock at Bandra, Hotel Centaur at Juhu, Hotel Centaur at Santacruz, Zaveri Bazaar, Katha Bazaar, Century Bazaar at Worli, Petrol Pump adjoining Shiv Sena Bhavan, Plaza Theatre and in lobbing handgrenades at Macchimar Hindu Colony, Mahim and at Bay-52, Sahar International Airport which left more than 257 persons dead, 713 injured and property worth about Rs.27 crores destroyed, and attempted to cause bomb explosions at Naigaum Cross Road and Dhanji Street, all in the city of Bombay and its suburbs i.e. within Greater Bombay. And thereby committed offences punishable under Section 3(3) of TADA (P) Act, 1987 and Section 120-B of IPC read with Sections 3(2)(i)(ii), 3(3)(4), 5 and 6 of TADA (P) Act, 1987 and read with Sections 302, 307, 326, 324, 427, 435, 436, 201 and 212 of Indian Penal Code and offences under Sections 3 and 7 read with Sections 25 (1A), (1B)(a) of the Arms Act, 1959, Sections 9B (1)(a)(b)(c) of the Explosives Act, 1884, Sections 3, 4(a)(b), 5 and 6 of the Explosive Substances Act, 1908 and Section 4 of the Prevention of Damage to Public Property Act, 1984 and within my cognizance."

In addition to the principal common charge of conspiracy framed at head firstly against all the co-conspirators including the appellant, he was also charged on the following counts:

At head Secondly: During the period between January-April, 1993, the appellant agreed to keep in his possession 85 hand grenades, 350 electronic detonators, 3270 live cartridges of AK-56 rifles which were smuggled by Tiger Memon and his associates for committing terrorist acts and thereby committed an offence punishable under Section 3(3) of TADA.

At head Thirdly: The appellant possessed the above mentioned arms and ammunitions and concealed the same in three suitcases in the damaged unused lavatory situated at the eastern side of the 2nd floor of Musafirkhana, Bombay and thus unauthorisedly possessed them within the notified area of Greater Bombay and thereby committed an offence punishable under Section 5 of TADA.

At head Fourthly: The appellant, during the above mentioned period, possessed the said arms and ammunitions with an intent to aid terrorists, contravened the provisions of the Arms Act, 1959, Explosives Act, 1884, Explosive Substances Act, 1908 and the Explosives Rules, 1983 and thereby committed an offence punishable under Section 6 of TADA.

At head Fifthly: The appellant possessed the above mentioned arms and ammunitions which were recovered at his behest on 27.03.1993 and thereby committed an offence punishable under Sections 3 and 7 read with Sections 25(1A) and (1B) (a) of the Arms Act, 1959.

56) The Designated Court, after considering the evidence brought on record by the prosecution, found the appellant guilty on all the charges except the charges mentioned at head firstly and secondly. The appellant has been convicted and sentenced for the above said charges as under:

Conviction and Sentence:

(i) The appellant has been convicted under Section 5 of TADA for commission of offence at head thirdly and sentenced to RI for life along with a fine of Rs. 1,00,000/-, in default, to further undergo RI for 3

years. (charge thirdly)
(ii) The appellant has been convicted under Section 6 of TADA for commission of offence at head fourthly and sentenced to RI for life along with a fine of Rs. 1,00,000/-, in default, to further undergo RI for 3 years. (charge fourthly)
(iii) The appellant has also been convicted under Sections 3 and 7 read with Sections 25(1-A), 25(1-B)(a) of the Arms Act, 1959 for commission of offence at head fifthly but no separate sentence was awarded on the said count. (charge fifthly)

1.
2.

Evidence

57) The evidence against the appellant (A-71) is in the form of:-
(i) his own confession;
(ii) confessions made by other co-conspirators; (co-accused);
(iii) testimony of prosecution witnesses; and
(iv) evidence of memorandum/discovery.

Out of the above-referred 4 categories of evidence, the appellant's own confession and confessions made by other co-accused were disbelieved by the Designated Court for rendering conviction in respect of charge thirdly and fourthly as well as offences under the Arms Act. The Designated Court mainly relied on the evidence of Memorandum/discovery and testimony of prosecution witnesses.

Deposition of Prosecution Witnesses:

58) The involvement and the role of the appellant is disclosed by the deposition of various prosecution witnesses which are as follows:

Deposition of Abdul Kadar Abubakar Khan (PW-323)

PW-323 was attached with DCB, CID as an Assistant sub-Inspector of Police. The relevant facts in his deposition are as under:-

(i) He deposed that on 27.03.1993, on the basis of the information received from reliable sources, he arrested the appellant.

(ii) During interrogation, the appellant showed willingness to make a voluntary statement.

(iii) He deposed that he called two panch witnesses.

(iv) He deposed that the appellant lead the police party and the panchas to Musafirkhana.

(v) In Musafirkhana, the appellant lead them to an unused lavatory on the second floor where three bags of Encore Company were kept on the floor.

(vi) He deposed that the keys of the said bags were lying next to them.

(vii) The appellant opened all the bags with the keys.

(viii) The first bag was found to be containing 85 hand grenades, second bag was found to be having 350 detonators and the third bag was containing 3,270 cartridges of AK-56 rifles.

(ix) He deposed that PI Shri Nandkumar Anant Chaugule (PW-444) of the Bomb Detection and Disposal Squad (BDDS) was called to defuse the hand grenades.

(x) He deposed that he lodged the complaint on 27.03.1993 and the same was marked as Exh. 1210.

(xi) He identified the appellant before the court in the dock.

The counsel for the appellant submitted that the deposition of this witness indicates that the police did no investigation qua the alleged recovery and neither any independent witness was made to witness the same even though such witnesses were available in the Musafirkhana. He further pointed out that the police took no efforts in this direction. He further stated that the alleged disclosure statement in the memorandum panchnama is a

fabricated one and, therefore, the case of the prosecution must fail. On perusal of his entire evidence and the discussion of the trial Judge, we are unable to accept the above objection.

Deposition of Nandkumar Chaugule (PW-444)

The witness was working as an Incharge, Senior Inspector of Police, Bomb Detection and Disposal Squad (BDDS) of CID Intelligence, Bombay at the relevant time. He deposed that:

(i) On 27.03.1993, he went to Musafirkhana and reached the lavatory on the second floor.

(ii) On the spot, he saw three suitcases. Out of them, one was containing green coloured hand grenades, the second was containing electronic detonators and the third suitcase was containing cartridges for AK-56 rifles.

(iii) He deposed that he asked his officer, P.I. Zarapkar to diffuse one hand grenade. Five electronic detonators were diffused by S.I. Desai. Thereafter, parts of the grenades and the detonators were handed over to PI Shivaji Shankar Sawant (PW-524).

Learned counsel for the appellant commented that it (deposition) does not connect the appellant with the alleged recovery at Musafirkhana. On perusal of his entire evidence, we reject the above objection of the counsel for the appellant.

Deposition of Shivaji Shankar Sawant (PW-524)

PW-524 was working as a Police Inspector since 1984. At the time of the incident, he was attached with Unit III of DCB, CID (Crime Branch). He deposed that:

(i) He noted the voluntary disclosure statement made by the appellant which has been marked as Exhibit 439.

(ii) He deposed that the appellant led the police party to the second floor of Musafirkhana.

(iii) From there, 3 suitcases were recovered and the same were containing 350 detonators, 3270 bullets of AK-47 and AK-56 rifles and 85 hand grenades.

(iv) PW 444 arrived at the spot and defused the hand grenades and the detonators.

(v) He drew the discovery panchnama which was marked as Exhibit 439A.

(vi) He deposed that he sent the articles seized for chemical analysis vide forwarding letter dated 09.06.1993 marked as Exh. Nos. 1810 and 1811.

(vii) He deposed that the CA report dated 20.07.1993 and 07.07.1993 were received and the same were marked as Exh. Nos. 1810-A and 1811-A.

(viii) He deposed that from the perusal of CA reports, it is clearly discernible that the articles seized at the behest of the appellant are explosive materials.

Mr. Sinha submitted that though this witness claims recovery of large quantity of arms, none of the police personnel enquired the other occupants of Musafirkhana on the said date. On perusal of his entire evidence, we are satisfied that there is no substance in the said objection.

Deposition of Rajan Pinanath Dhoble (PW-585)

At the time of the incident, he was attached with DCB, CID, Unit-I as a P.I. He deposed as under:

(i) On 27.03.1993 after receipt of information, he arrested A-71 in C.R. No. 71193.

(ii) Senior P.I. Shri Shivaji Sawant did the interrogation of the said accused.

(iii) He was also present at the said stage.

(iv) During the said interrogation, the voluntary statement made by the accused was recorded by drawing the memorandum panchanama in the presence of panch witnesses.

(v) Thereafter, the accused led panchas and police to an unused latrine on the second floor of Haji Sabu Siddique MusafirKhana.
(vi) At the said place, the accused had taken out three suitcases.
(vii) The suitcases were found to be containing 85 hand grenades, 3270 live cartridges and 350 detonators.
(viii) The same were taken charge by the police by further drawing recovery panchanama in the presence of panch witnesses.
(ix) Senior P.I. Shri Sawant registered separate case regarding the said seizure.
(x) In the month of August, 1993, he came to the conclusion that the material collected during the investigation disclosed the involvement of the arrested accused in the commission of offences under the Explosive Substances Act.

Here again, learned counsel for the appellant submitted that not even a single entry was made in Station Diary of DCB, CID qua receiving information as to the movement of police team from their office to the house of the appellant and vice versa. Merely because of non-furnishing of any proof with regard to the movement in the Station Diary, his evidence cannot be rejected.

Deposition of Faquih Abdul Sattar (PW-331)

At the relevant time, he was working as an Assistant Manager in the office of Mohmmed Haji Sabu Siddique Musafir Khana Trust. The relevant facts in his deposition are as under:-

(i) He deposed that he knew a person by name Lalubhai (A-71).
(ii) On 08.03.1993, a person came to him and told that he was sent by Lalubhai (A-71) and he wanted two rooms for 4/5 days.
(iii) He booked the rooms and allotted Room Nos. 16 and 17.
(iv) The said person was in possession of the rooms from 08.03.1993 to 19.03.1993.

The counsel for the appellant pointed out that the statement of PW-331 and the manner in which memorandum/discovery panchnamas were prepared without obtaining his signature indicates that the appellant was framed by the police. On perusal of his evidence, we reject the said contention.

59) From the entire evidence on record, the following stood established:
(i) The recovery of large quantity of arms and ammunitions from Musafirkhana at the instance of A-71 clearly establishes that he was in conscious possession of the arms and ammunitions and explosives.
(ii) He was a smuggler and had association with Tiger Memon, Dawood Ibrahim, Haji Mastan who were all smugglers;
(iii) He had booked the rooms in the MusafirKhana, from where large quantity of arms were seized; and
(iv) He was aware of the fact that arms and ammunitions were kept in both the rooms;

60) Though counsel for the appellant commented on the prosecution witnesses who spoke about the role of the present appellant (A-71), as discussed above, we find no merit in the said contention.

Recovery:

Memorandum of Discovery Panchnama

61) The Memorandum of Panchnamas (Exh. Nos. 439 and 439A) were recorded between 12:30 p.m. and 12:45 p.m. on 27.03.1993 in the office of DCB, CID. The panchas were a) Dasarath Govind Londe (not examined since expired); and b) Syed Badshah Gouse Mohideen (PW-85), who turned hostile. As per the prosecution, the police have recovered three suit cases of "Encore" Company containing 85 handgrenades, 350 electronic detonators and 3270 live cartridges of AK-57 rifles from the unused lavatory of second floor of Musafirkhana.

62) Both the documents, namely, Exh. Nos. 439 and 439A were having the signatures of the panch witnesses. Apart from this, PI Shivaji Shankar Sawant (PW-524), also signed the same. Learned counsel for the appellant

submitted that in the absence of signature of the appellant on either side of the memorandum or discovery panchnama, the entire memorandum has to be ignored. However, learned counsel appearing for the CBI, by pointing out the signature in the said document, claimed that such signature was that of the appellant. Even if we accept that the appellant-accused has not signed the panchnama, in view of the contents therein and the statement of panch witness (though he turned hostile at a later point of time), it cannot be rejected as claimed by the counsel for the appellant. Further, one of the panchas i.e., PW-85 though turned hostile, the fact remains that he accepted his signature. He also admitted the contents and informed the Court that the same was explained to him. Admittedly, this was not challenged by the appellant (A-71) while cross examining him. These aspects support the stand of the prosecution.

63) The document Exh. 439 and 439A makes it clear that the accused appellant led the police party on foot up to the eastern side of the Musafirkhana and pointed out one damaged and unused lavatory as the place where he had kept the three suit cases. The said lavatory was having a broken door which was open. A-71 pointed out 3 bags kept inside the lavatory which were kept on the floor of the same. All the three bags were of Encore Company and were almost of the same size. The keys of the said bags were also lying at the said place. The said keys were in three separate bunches. A-71 took up one bunch of keys and opened one of the bags out of the three. The said bag was found to be containing 85 hand grenades. By way of sample, one of the hand grenade from the said bag was taken by PI Sawant. Thereafter, with the help of second bunch of keys, A-71 opened another bag. The bag was found to be containing 4 bundles of detonators. Three bundles out of the said 4 bundles were containing 100 detonators each while the fourth bundle was containing 50 detonators. For sample, one detonator from each bundle was taken by PI Sawant. Thereafter, A-71 opened the third bag with the help of keys. The said bag was found to be containing 3270 cartridges of AK-56 rifles. The said cartridges were bearing three different types of markings. PI Sawant took samples of 5 cartridges, 4 cartridges and 1 cartridge having different types of marking from the said bag.

64) In respect of the said discovery, FIR being LAC No. 15 of 1993 dated 27.03.1993 was lodged at 15.30 hrs. by PS/DGP/CID on the complaint of Abdul Kadar Abubakkar Khan (PW-323).

65) While considering the common charge, namely, conspiracy, the Designated Court has recorded a finding that there is no evidence on record to establish that the recovered contraband was smuggled by Tiger Memon and his associates. The Court also recorded that the evidence brought in has failed to establish precisely the period for which A-71 was in possession of the said contraband material and further, there is nothing on record to suggest for what purpose the appellant was in possession of such a huge quantity of contraband.

66) It is relevant to point out that at the trial, the appellant-accused along with A-103, in addition to the principal charge of conspiracy framed at head firstly was further charged at head secondly for commission of offence under Section 3(3) of TADA on account of A-71, in pursuance of the conspiracy, during the period, i.e., January, 1993 to April, 1993 having agreed to keep in his possession 85 hand grenades, 350 electronic detonators, 3270 live cartridges of AK-56 rifles unauthorisedly, which were part of consignment smuggled by co-conspirators Tiger Memon and his associates for commission of terrorist acts.

67) Regarding the discovery of arms and ammunitions in large quantities, the Designated Judge has noted that though one of the panch witness had not supported the prosecution case, however, the Designated Court has held that the evidence of the officer from BDDS cannot be termed to be an interested witness as the said investigation was not affected at his behest. Considering all the relevant materials pertaining to the statement made by the accused and discovery/seizure effected in pursuance of the same and the said evidence being duly corroborated by contemporaneous document i.e. Panchnama referred to hereinabove and other evidence establishing the nature of contraband articles, the same will lead to the conclusion that A-71 was in possession of such article which he had kept in the unused lavatory.

68) As rightly concluded by the Designated Judge, all the said evidence, in clear terms, reveal that A-71 was in possession of huge quantity of contraband material within the notified area of Greater Bombay attracting

the provisions of Section 5 of TADA and failing to rebut the presumption arising out of such unlawful possession. The said presumption has been explained by a Constitution Bench of this Court in the case of Sanjay Dutt vs. State thr. CBI, Bombay, (1994) 5 SCC 410 as the presumption of having himself possessed the same for commission of terrorist activity. In view of the same, the Designated Judge has rightly held A-71 guilty of commission of offence under Section 5 of TADA.

69) Considering the large quantity of contraband materials in the possession of A-71, the period in which he was found to be in possession of the same and all the other relevant circumstances, it lead to the conclusion that A-71 himself being possessed the same and in the said process having contravened the provisions of the Arms Act, 1959, the Explosives Act, 1884 etc. thereby having made himself liable for commission of offences under Section 6 of TADA and also under Sections 3 and 7 read with Section 25 (1-A) and (1-B) (a) of the Arms Act, 1959.

70) Upon a conjoint reading of the entire evidence, it is clearly established that the appellant was fully conscious and aware of the ultimate use of the smuggled arms and ammunitions and explosives. Thus, the charges framed at head thirdly and fourthly against the accused stood established.

Appeal by the State of Maharashtra through CBI:

Criminal Appeal No. 413 of 2011

71) We have already extracted the common charge of conspiracy in the earlier part of our order. The Designated Court, on going through the confessional statement of the appellant and co-accused persons, viz., A-10 and A-12 disbelieved their version and rejected the same. Though Mr. Gupta, learned counsel for the CBI pointed out certain materials regarding the charge framed at head firstly, i.e., conspiracy, we are satisfied that the prosecution failed to establish the relevant materials, viz., contraband, being part of the material smuggled into India by Tiger Memon and Dawood Ibrahim for commission of terrorist act or the same being given to A-71 by Tiger Memon or any other co-conspirator and in the absence of further acceptable material in order to prove the nexus of A-71 with the conspiracy for which the charge was framed at head firstly, A-71 cannot be held liable for commission of the said offence. We agree with the conclusion arrived at by the Designated Court and the appeal of the State is liable to be dismissed.

Sentence

72) It is brought to our notice that the appellant was given an opportunity to defend himself on the question of quantum of sentence. The appellant filed statement dated 07.11.2006 on the quantum of sentence which is Exh. Nos. 3000 and 3000A. The appellant prayed that the following, amongst other factors, may be considered while determining his sentence:

> "1) I am 65 yrs. of age.
> 2) I had suffered from schizophrenia about three years back
> 3) Due to the same, I was required to take medicines and so also shock treatment.
> 4) I am still under medication
> 5) I am also suffering from the ailment of kidney stone.
> 6) I was not involved in commission of any terrorist act.
> 7) I have faced the legal proceedings for about 13 years.
> 8) I had already remained in custody for 2 yrs. and 6 months.
> 9) Hardly there is any record of myself having not complied with any of the conditions imposed by the court while granting the bail.
> 10) I have no antecedent.
> 11) I am producing zerox copies of ration card, election card and papers showing my age and I am suffering from ailment of kidney. (marked as Exhibit : 3000-A colly.)
> 12) Considering circumstances peculiar to me i.e. I was not involved in commission of terrorist act, my age and I am sick person, I may be given the lesser punishment."

73) The Designated Court considered all these factors while determining the sentence for the appellant. After considering the acts committed and the statement regarding the quantum of sentence, it was held:

> "809) On the aforesaid backdrop considering submission advanced by Ld.

advocate Mr. HH Ponda for A-71 that considering character of evidence about guilt of accused i.e. the same being based upon the Disclosure Statement leading to recovery of huge contraband articles from a lavatory at a public place or quantity of material recovered denoting that the same were with A-71 merely for storage purpose and hence considering his age being of 65 years or he is a sick person minimum sentence as provided under law would be warranted does not appeal to mind after taking into consideration all the relevant circumstances relating to the offences for which A-71 has been found guilty. Such a conclusion is inevitable as a fact cannot be overlooked that A-71 was possessing such contraband material capable of causing mass destruction within the notified area. It needs no saying that the weapon of such a nature cannot be acquired and/or possessed without incurring any appreciable expenditure. Truly speaking possession of such a large quantity of contraband material with A-71 viewed from any angle i.e. either himself having acquired the same or somebody else having kept with him and taking into consideration the purpose for which the same can be said to have been possessed i.e. illegal use of same for illegal purpose would warrant levying the maximum punishment prescribed under law.

810) Thus after taking into consideration the gravity of acts committed by A-71, nature of material possessed by him but the same being not recovered from his house and the same being recovered from a unused lavatory in Musafirkhana but concealed at the said place, A-71 being not found involved in terrorist act and considering matters disclosed from clauses No. 1 to 12 in answer to relevant question asked to him while recording his statement upon quantum of sentence to be imposed i.e. at Exh.3000 i.e. his age, the ailments suffered by him, himself being not fully recovered, himself having faced legal proceedings for 13 years, himself having no antecedents, himself having not involved in any terrorist act, court having not received any adverse report about his conduct etc., during long drawn trial and having regard to sentence given to A-l07, 72 and few others having regard to quantity of contraband material possessed by them and the material possessed by A-71 sentence of RI for Life and a fine of Rs. l lakh with a suitable sentence of further RI in event of non-payment of fine for commission of offence u/s.5 of TADA and sentence of RI for life and a fine of Rs. 1 lakh with a suitable sentence of further RI in event of non-payment of fine for commission of offence u/s. 6 of TADA with no separate sentence for the reasons stated earlier for commission of offence under Sec. 3 and 7 r/w Sec. 25 (1A) (1B)(a) of Arms Act for A-71 would serve the ends of justice. Needless to add that contraband material seized will require to be confiscated."

74) Learned counsel for the appellant submitted that under the facts and circumstances of the case, the Designated Court while sentencing the appellant erred in not striking a balance between 'doctrine of proportionality' and 'doctrine of rehabilitation' and according to him, the appellant was granted maximum punishment prescribed under Sections 5 and 6 of TADA whereas minimum punishment prescribed is 5 years. He further submitted that considering his age, ailment and conduct the appellant did not deserve the maximum punishment. He also pointed out that the appellant had already undergone a period of 8 = (eight and a half) years approximately without remission.

75) It is relevant to note that even according to the prosecution, all the above mentioned goods though being smuggled, kept only in the open lavatory within the Musafirkhana. In other words, admittedly, the recovery was from an open and accessible place to all the persons visiting the Musafirkhana for any purpose including prayer or the persons staying therein. It is also relevant to point out that the prosecution failed to lead acceptable evidence to show that such recovered contrabands were used in any crime by the appellant and even the Designated Court came to the same finding. As per the proved charges under Sections 5 and 6 of TADA, the minimum punishment prescribed is 5 years and maximum is life sentence. Taking note of the age, ailments and conduct of the appellant as recorded by the Designated Court itself in Part 46 of the impugned judgment noted

down while confirming the conviction, 'we feel that the appellant did not deserve the maximum sentence of life imprisonment'. At the time of arguments, learned counsel for the appellant pointed out that as on date, the appellant is more than 70 years of age and is suffering from a number of ailments. About his medical condition and ailments, learned counsel has furnished all the details in Crl.MP No. 5225-5226 of 2011 wherein it has been stated that the appellant is on liquid diet, he has no criminal antecedent and there is no adverse report with respect to him during the trial. It is also pointed out that the appellant has already undergone a period of 8 = years (approximately) without remission. Taking note of all these aspects, we feel that while confirming the conviction, ends of justice would be met by reducing the sentence of the appellant to RI for 10 years.

76) Consequently, we dispose of the appeals filed by the appellant (A-71) while confirming the conviction and reduce the sentence to RI for 10 years. The appeal filed by the State in respect of acquittal ordered by the Designated Court relating to the common charge of conspiracy is also dismissed.

Criminal Appeal No. 1365 of 2007

Imtiyaz Yunusmiyan Ghavate (A-15) ... Appellant(s)

vs.

The State of Maharashtra,
through CBI-STF, Bombay ...Respondent(s)

77) Ms. Farhana Shah, learned counsel for the appellant (A-15) and Mr. Mukul Gupta - learned senior counsel, duly assisted by Mr. Satyakam, learned counsel for the respondent (CBI).

78) This appeal is directed against the final judgment and order of conviction and sentence dated 16.11.2006 and 17.07.2007 respectively, whereby the appellant (A-15) has been convicted and sentenced to rigorous imprisonment (RI) for life by the Designated Court under TADA for the Bombay Bomb Blast Case, Greater Bombay in B.B.C. No.1/1993.

Charges:

79) A common charge of conspiracy was framed against all the co-conspirators including the appellant (A-15). The relevant portion of the charge is reproduced hereunder:-

> "During the period from December, 1992 to April, 1993 at various places in Bombay, District Raigad and District Thane in India and outside India in Dubai (U.A.E.) and Pakistan, entered into a criminal conspiracy and/or were members of the said criminal conspiracy whose object was to commit terrorist acts in India and that you all agreed to commit following illegal acts, namely, to commit terrorist acts with an intent to overawe the Government as by law established, to strike terror in the people, to alienate sections of the people and to adversely affect the harmony amongst different sections of the people, i.e. Hindus and Muslims by using bombs, dynamites, hand grenades and other explosive substances like RDX or inflammable substances or fire-arms like AK-56 rifles, carbines, pistols and other lethal weapons, in such a manner as to cause or as likely to cause death of or injuries to any person or persons, loss of or damage to and disruption of supplies of services essential to the life of the community, and to achieve the objectives of the conspiracy, you all agreed to smuggle fire-arms, ammunitions, detonators, hand grenades and high explosives like RDX into India and to distribute the same amongst yourselves and your men of confidence for the purpose of committing terrorist acts and for the said purpose to conceal and store all these arms, ammunitions and explosives at such safe places and amongst yourselves and with your men of confidence till its use for committing terrorist acts and achieving the objects of criminal conspiracy and to dispose off the same as need arises. To organize training camps in Pakistan and in India to import and undergo weapons training in handling of arms, ammunitions and explosives to commit terrorist acts. To harbour

and conceal terrorists/co-conspirators, and also to aid, abet and knowingly facilitate the terrorist acts and/or any act preparatory to the commission of terrorist acts and to render any assistance financial or otherwise for accomplishing the object of the conspiracy to commit terrorist acts, to do and commit any other illegal acts as were necessary for achieving the aforesaid objectives of the criminal conspiracy and that on 12.03.1993 were successful in causing bomb explosions at Stock Exchange Building, Air India Building, Hotel Sea Rock at Bandra, Hotel Centaur at Juhu, Hotel Centaur at Santacruz, Zaveri Bazaar, Katha Bazaar, Century Bazaar at Worli, Petrol Pump adjoining Shiv Sena Bhavan, Plaza Theatre and in lobbing handgrenades at Macchimar Hindu Colony, Mahim and at Bay-52, Sahar International Airport which left more than 257 persons dead, 713 injured and property worth about Rs.27 crores destroyed, and attempted to cause bomb explosions at Naigaum Cross Road and Dhanji Street, all in the city of Bombay and its suburbs i.e. within Greater Bombay. And thereby committed offences punishable under Section 3(3) of TADA (P) Act, 1987 and Section 120-B of IPC read with Sections 3(2)(i)(ii), 3(3)(4), 5 and 6 of TADA (P) Act, 1987 and read with Sections 302, 307, 326, 324, 427, 435, 436, 201 and 212 of Indian Penal Code and offences under Sections 3 and 7 read with Sections 25 (1A), (1B)(a) of the Arms Act, 1959, Sections 9B (1)(a)(b)(c) of the Explosives Act, 1884, Sections 3, 4(a)(b), 5 and 6 of the Explosive Substances Act, 1908 and Section 4 of the Prevention of Damage to Public Property Act, 1984 and within my cognizance."

In addition to the above-said principal charge of conspiracy, the appellant was also charged on the following counts:

At head Secondly; The appellant committed an offence punishable under Section 3(3) of TADA by committing the following overt acts:

(a) He participated in the landings and transportation of arms, ammunitions and explosives smuggled into India at Shekhadi on 03.02.1993 and 07.02.1993; and

(b) He participated in the preparation of vehicle bombs at Al-Hussaini Building on the night of 11/12.03.1993.

At head Thirdly; The appellant planted explosives laden scooter No. MH-02-2924 at Dhanji Street, Bombay on 12.03.1993 for causing explosion and thereby committed an offence punishable under Section 3(3) of TADA.

At head Fourthly; The appellant, by planting the above-mentioned explosives laden scooter with the intention of committing murder, has thereby committed an offence punishable under Section 307 IPC.

At head Fifthly; The appellant, by planting the above-mentioned explosives laden scooter at Dhanji Street with the intention and knowledge of causing damage to the property, has committed an offence punishable under Section 435 read with Section 511 IPC.

At head Sixthly; The appellant, by planting the above-mentioned scooter, committed an offence under Section 436 read with Section 511 IPC.

At head Seventhly; The appellant, by possessing the above-mentioned explosives laden scooter which was planted by him at Dhanji Street, has committed an offence punishable under Section 4 (a)(b) of the Explosive Substances Act, 1908.

At head Eighthly; The appellant, by possessing the RDX explosives in the above-mentioned scooter, without valid licence, has committed an offence under Section 9B(1)(b) of the Explosives Act, 1884.

80) The Designated Judge found the appellant (A-15) guilty on all the aforesaid charges except charge (b) at head secondly. The appellant (A-15) has been convicted and sentenced for the abovesaid charges as follows:

Conviction and Sentence:

(i) The appellant has been convicted for the offence of conspiracy under Section 3(3) of TADA and under Section 120-B IPC read with the offences described at head firstly and sentenced to RI for life along with a fine of Rs. 25,000/-, in default, to further undergo RI for 6 months. (charge firstly)

(ii) The appellant has been convicted under Section 3(3) of TADA for commission of offences at head secondly and sentenced to RI for 10 years along with a fine of Rs. 50,000/-, in default, to further undergo RI for 1 year. (charge secondly)

(iii) The appellant has been convicted under Section 3(3) of TADA for commission of offences mentioned at head thirdly and sentenced to RI for life along with a fine of Rs. 50,000/-, in default, to further undergo RI for 1 year. (charge thirdly)

(iv) The appellant has also been convicted under Section 307 of IPC for commission of offences mentioned at head fourthly and sentenced to RI for 10 years along with a fine of Rs. 50,000/-, in default, to further undergo RI for 1 year. (charge fourthly)

(v) The appellant has been convicted under Section 435 read with Section 511 of IPC for commission of offences at head fifthly and sentenced to RI for 3 = (three and a half) years along with a fine of Rs. 25,000/-, in default, to further undergo RI for 6 months. (charge fifthly)

(vi) The appellant has also been convicted under Section 436 read with Section 511 of IPC for commission of offences at head sixthly and sentenced to RI for 5 years along with a fine of Rs. 12,500/-, in default, to further undergo RI for 3 months. (charge sixthly)

(vii) The appellant has been convicted under Section 4(b) of the Explosive Substances Act, 1908 for commission of offence at head seventhly and sentenced to RI for 5 years along with a fine of Rs. 50,000/-, in default, to further undergo RI for 1 year. (charge seventhly)

(viii) The appellant has also been convicted under Section 9B(1)(b) of the Explosives Act, 1884 for commission of offence at head eighthly and sentenced to RI for 1 year along with a fine of Rs. 2,000/-, in default, to further undergo RI for 2 months. (charge eighthly)

Evidence

81) The evidence against the appellant (A-15) is in the form of:-

(i) his own confession;

(ii) confessions made by other co-conspirators; (co-accused);

(iii) testimony of prosecution witnesses; and

(iv) documentary evidence.

Confessional Statement of Imtiyaz Yunusmiyan Ghavate (A-15)

82) Confessional statement of A-15 under Section 15 of TADA has been recorded on 07.05.1993 (12:30 hrs.) and 09.05.1993 (13:30 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The following facts emerge from his confession:-

(i) He was a resident of 23, Naupada, Ist Floor, Bandra (E), Bombay.

(ii) He was a good friend of Anwar Haji Theba (AA), who was his neighbour and used to work for Tiger Memon.

(iii) He was introduced to Tiger Memon by Anwar.

(iv) He, along with Asgar Yusuf Mukadam (A-10), Abdul Ismail Gani Turk (A-11), Rafiq Madi (A-46), Anwar Theba (AA), Parvez Nazir Ahmed Shaikh (A-12), Shafi (AA) and Salim, was working for Tiger in his hawala business.

(v) On 23/24.01.1993, Anwar told the appellant that he had received a phone call from Tiger that he will be coming on that day and they had to go to the Airport to receive him.

(vi) He along with Anwar, Shafi and A-11 went to the Airport to receive Tiger Memon.

(vii) During the last week of January, 1993 he along with Shafi (AA), A-11, Anwar, Rafiq Madi (A-46) and A-12 participated in the landing at Shekhadi. The landing did not take place for 3-4 days. During that period, they stayed at Hotel Vasava and then shifted to Hotel Big Splash, Alibaug.

(viii) He was also present when smuggled arms and explosives were

opened at Waghani Tower and re-loaded in cavities of vehicles and when bags containing explosives were sent by Tiger Memon through Dawood Taklya for safe custody.

(ix) He also helped in loading, unloading, emptying and re-loading of arms and explosives. The bags which had been brought in the vehicles were opened and found that it contained AK-56 rifles, magazines, pistols, hand-grenades, cartridges and bundles of wires.

(x) At the instance of Tiger Memon, he brought one jeep containing arms and ammunitions to Bombay and kept it in the garage of Gulam Hafiz Shaikh @ Baba (A-73) and handed over the key of the jeep to him.

(xi) Anwar had told him that during the riots in January, 1993, their community had suffered severe loss and in order to take revenge, Tiger was imparting training of weapons to some of the persons in Dubai.

(xii) After getting training at Dubai, he came back to Bombay and Anwar met the appellant 1-2 times at Bandra Talab and told him that he has taken training in handling weapons and bombs in Dubai and very soon they would take the revenge of the injustice caused to the Muslims in Bombay.

(xiii) Anwar arrived at Al-Hussaini building on 12.03.1993 and checked the dickeys of all the scooters. Thereafter, he took a steel grey coloured pencil from his coat pocket and inserted it in each of the black coloured soap like chemical, i.e., gun powder kept in the dickeys.

(xiv) The appellant then asked Anwar as to what he was doing, to which he replied that the bombs were ready and by using these bombs, they would take revenge for the injustice caused to their community.

(xv) As directed by Anwar, he took one old blue coloured explosives laden scooter bearing registration No. 2924 and parked the same in a corner of Diamond Market.

(xvi) After 5-6 days of the blast, he was arrested by Worli P.S.

83) From a perusal of the confession of the appellant, it emerges that he worked in close association with the other co-accused persons towards attainment of the objects behind the conspiracy and he also actively participated in the landings and transportation of arms and ammunitions and explosives which landed at Shekhadi. It is also very much clear from his confession that he parked a scooter laden with explosives and fitted with a time pencil detonator in the Diamond Market.

Confessional Statements of co-accused

84) Apart from his own confession, the involvement of the appellant has also been disclosed in the confessional statements of the following co-accused. The legality and acceptability of the confessions of the co-accused has already been considered by us in the earlier part of our discussion. The said confessions insofar as they refer to the appellant (A-15) are summarized hereinbelow:

Confessional Statement of Mohammed Shoaib Mohammed Kasam Ghansar (A-9)

Confessional statement of A-9 under Section 15 of TADA has been recorded on 19.04.1993 (13:10 hrs.) and 22.04.1993 (00:30 hrs.) by Shri Prem Krishan Jain (PW-189), the then DCP, Zone X, Bombay. The following facts emerge from the abovesaid confession with regard to the appellant (A-15):

(i) A-9 used to see Gani (A-11), Rafique Madi (A-46), Imtiyaz (A-15), Parvez (A-12), Shafi, Salim and Anwar in the office at Dongri.

(ii) A-15 was present in the house of Anwar on 12.03.1993, when Asgar Yusuf Mukadam (A-10), Mohd. Shoeb and Parvez (A-12) went there with three suitcases filled with RDX.

(iii) A-15 was present along with other co-accused persons at Al-Hussaini building on 12.03.1993 when Anwar inserted time based detonators into the black chemical filled up in the dickeys of the scooters.

Confessional Statement of Asgar Yusuf Mukadam (A-10)

Confessional statement of A-10 under Section 15 of TADA has been recorded on 23.04.1994 (18:00 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The following facts emerge from the abovesaid confession with regard to the appellant (A-15):

(i) A-15 used to attend Tiger’s office at Dongri and assisting in the

activities of Hawala transactions including the delivery and receipt of funds.

(ii) A-15 was asked by Anwar to reach the residence of Tiger Memon at Al-Hussaini building on 12.03.1993.

(iii) A-15 took an explosives laden scooter fitted with a time pencil detonator at the instance of Anwar.

Confessional Statement of Abdul Gani Ismail Turk (A-11)

Confessional statement of A-11 under Section 15 of TADA has been recorded on 15.04.1993 (22:35 hrs.) and 18.04.1993 (01:15 hrs.) by Shri Prem Krishna Jain (PW-189), the then DCP, Zone X, Bombay. A-11, with reference to the appellant, stated as under:-

(i) A-15 was working with Tiger Memon.

(ii) A-15 was present at the Al-Hussaini Building on 27/28th January along with co-accused Tiger Memon, Anwar, Shafi, Yakub Memon, Rahin Memon, Parvez Shaikh, Rafique Madi and from there all of them went to Mhasla and Shekhadi for landings.

(iii) A-15 also visited Shekhadi for 2-3 times and on account of landing not taking place for a few days, they stayed at Hotel Vasava and, thereafter, at Hotel Big Splash, Alibaug.

(iv) On 02/03.02.1993, he visited the Waghani Tower along with A-15 and others and smuggled goods were also brought in using vehicles by co-accused Tiger, Javed Chikna, Dadabhai (A-17), Dawood Taklya and Anwar. The said goods were unloaded and checked by Tiger Memon (AA) and were found to be handgrenades, rifles, pistols, black soap, rounds, electric wires, which were reloaded in vehicles and sent to Bombay.

(v) A-15 was present at Bandra along with Anwar.

(vi) On 07.03.1993, he told the accused that Tiger Memon had returned from Dubai.

Confessional Statement of Parvez Nazir Ahmed Shaikh (A-12)

Confessional statement of A-12 under Section 15 of TADA has been recorded on 18.04.1993 (14:00 hrs.) and 21.04.1993 (06:50 hrs.) by Shri Prem Krishna Jain (PW-189), the then DCP, Zone X, Bombay. A-12, with reference to the appellant, stated as under:

(i) He was working in the office of Tiger Memon.

(ii) A-15 took the accused (A-12) to Al-Hussaini Building on the pretext that they have to go for Tiger’s work wherefrom all the accused persons present there including Tiger Memon left for Mhasla.

(iii) He went to the Shekhadi Coast along with other associates to help Tiger Memon (AA) in the landing of arms and ammunitions and explosives, which was delayed and effected on 03.02.1993, and also in the transportation of the said material to the Waghani Tower and then to Bombay using vehicles containing secret cavities for the said purposes.

(iv) In the second week of February 1993, he again went along with other associates and helped Tiger in landing at Shekhadi Coast and transportation of the consignments to the Tower and thereafter to Bombay.

(v) Tiger Memon gave two passports to Mohammed Hussain with the instruction to hand over the same to the appellant.

(vi) He was present at the residence of Anwar Theba, when Anwar and A-44 left in Maruti Van with A-9, A-10 and A-12 for planting the bombs.

(vii) Thereafter, he reached Al-Hussaini building when Anwar inserted time device detonator in the dickey of the scooters containing black chemical.

Confessional Statement of Dawood @ Dawood Taklya Mohd. Phanse @ Phanasmiyan (A-14)

Confessional statement of A-14 under Section 15 of TADA has been recorded on 15.04.1993 (17:55 hrs.) and 17.04.1993 (19:30 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. A-14, in his confessional statement, with reference to the appellant stated that on 19th January, A-15 along with Rafiq Madi contacted him and informed about the confirmation of his ticket for Dubai and also escorted him to the Airport.

Confessional Statement of Sayyed Abdul Rehman Shaikh (A-28)

Confessional statement of A-28 under Section 15 of TADA has been

recorded on 23.04.1993 (17:00 hrs.) and 01.05.1993 (23:30 hrs.) by Shri Sanjay Pandey (PW-492), the then DCP, Zone-VIII, Bombay. His confession further establishes that the appellant (A-15) was a close associate of Tiger Memon and was involved in smuggling activities with him.

Confessional Statement of Shahnawaz Abdul Kadar Qureshi (A-29)

Confessional statement of A-29 under Section 15 of TADA has been recorded on 18.05.1993 (18:30 hrs.) and 21.05.1993 (14:45 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. His confession reveals the following facts:

(i) The appellant came along with Tiger Memon.
(ii) He actively participated in the landing of arms ammunitions and explosives at Shekhadi. He was driving the jeep and transported the arms and ammunitions and explosives smuggled at Shekhadi from Waghani Tower to Bombay.

Confessional Statement of Mohd. Mushtaq Moosa Tarani (A-44)

Confessional statement of A-44 under Section 15 of TADA has been recorded on 26.05.1993 (16:55 hrs.) and 22.05.1993 (10:00 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. His confession reveals the following facts:

(i) The appellant was present at the house of Anwar. On the instructions of Anwar, he along with A-44, visited the Al-Hussaini building to see A-10 and left a message with the watchman of the said building to send A-10 with the vehicle at the residence of Anwar. The appellant returned along with A-44. The appellant was also present when A-44 and Anwar left in the Maruti Van which was brought by A-10 alongwith two other boys.
(ii) Anwar showed the time based detonator pencils before the appellant.
(iii) The appellant (A-15) was present at the Al-Hussaini building when A-44 returned after planting the suitcase and told that he had planted the suitcase in the room as per the conspiratorial plan.

Confessional Statement of Mohd. Rafiqu@ Rafiq Madi Musa Biyariwala (A-46)

Confessional statement of A-46 under Section 15 of TADA has been recorded on 21.04.1993 (19:00 hrs.) and 23.04.1993 (21:25 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. His statement reveals as under:

(i) The appellant worked with Tiger Memon and attended his Dongri office for assisting him in the business activities apart from landing operations of the smuggled goods.
(ii) He along with the accused and other associates assisted Tiger Memon in the landing at Shekhadi which took place on 03.02.1993, after delay of 2-3 days, and then he arranged for transportation along with Dadabhai (A-17) and others.

Confessional Statement of Sahikh Ali Shaikh Umar (A-57)

Confessional statement of A-57 under Section 15 of TADA has been recorded on 19.04.1993 (12:00 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. His confession corroborates with the testimony of other accused with regard to the fact that the appellant (A-15) was working with Tiger Memon.

Confessional Statement of Sujjad Alam @ Iqbal Abdul Hakim Nazir (A-61)

Confessional statement of A-61 under Section 15 of TADA was recorded on 21.04.1993 by Shri K.L. Bishnoi (PW-193). His confessional statement corroborates with the abovesaid confessions that the appellant (A-15) participated in the landing in February, 1993.

Confessional Statement of Nasir Abdul Kadar Kewal @ Nasir Dhakla (A-64)

Confessional statement of A-64 under Section 15 of TADA has been recorded on 22.01.1995 and 24.01.1995 by Shri H.C. Singh (PW-474), the then Superintendent of Police, CBI/SPE/STF, New Delhi. The confession of A-64

corroborates with the abovesaid confessions that the appellant (A-15) participated in the landing in February, 1993.

Confessional Statement of Gulam Hafiz Shaikh @ Baba (A-73)

Confessional statement of A-73 under Section 15 of TADA has been recorded on 15.05.1993 (22:05 hrs.) and 17.05.1993 (01:45 hrs.) by Shri Vinod Balwant Lokhande, the then DCP, Airport Zone, Bombay. His confession reveals as under:

(i) A-73 knows Tiger Memon and his partners including the appellant and other co-accused.
(ii) A-15 was present at the Tower in Mhasla along with other co-accused.
(iii) A-15 was present while unloading of goods was being done from a truck and also at the time of re-loading in the Jeep and tempo.

Confessional Statement of Mobina @ Baya Moosa Bhiwandiwala (A-96)

Confessional statement of A-96 under Section 15 of TADA has been recorded on 30.04.1993 (18:00 hrs.) and 02.05.1993 (18:00 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. She stated that she knew the appellant (A-15) as one of Tiger's men.

85) From the aforementioned confessional statements, it is established that:

(i) The appellant was closely associated with Tiger Memon.
(ii) He was also a close associate of Anwar.
(iii) He used to work with Tiger Memon and assiting him in his smuggling activities.
(iv) A-15 actively participated in the landings of arms and ammunitions and explosives which took place at Shekhadi on both the occasions.
(v) He was present at Anwar's house on 12.03.1993 when the other co-accused came there with 3 suitcases filled with RDX.
(vi) The appellant knew that time based detonators were being used to cause explosions at the various selected targets.
(vii) He was also present at Al-Hussaini building on 12.03.1993 at the time when the bombs (vehicles) were being taken to the various locations (targets) selected.
(viii) He drove the scooter filled with RDX, fitted with time device detonator and parked the same at Diamond House.

Deposition of Prosecution Witnesses:

86) Apart from the aforesaid evidence, the involvement and the role of the appellant in the conspiracy as stated above is disclosed by the deposition of various prosecution witnesses which are as under:

Deposition of Mohd. Usman Jan Khan (PW-2)

The relevant material in his evidence is as under:-

(i) He knows the appellant as 'Imtiyaz';
(ii) He identified the appellant before the court;
(iii) Tiger Memon, Anwar, A-15, Nazir and one other person were present at Hotel Big Splash;
(iv) A meeting was held at about 12.00 p.m. in Hotel Big Splash by Tiger Memon in which PW-2 and the appellant (A-15) and many others were present, thereafter, they all left for Shekhadi coast.

From the evidence of the Approver (PW2), it is duly established that the appellant participated in the landing at Shekhadi along with other co-accused persons.

Deposition of Deepak Narottamdas Seth (PW-21)

PW-21 is an eye-witness. At the relevant time, he was a Broker in Zaveri Bazaar. The following facts emerge from his deposition:

(i) On 12.03.1993, at 2 p.m., he saw the appellant (A-15) quarrelling with a feriwala in front of Diamond House.
(ii) The appellant forcibly parked a blue scooter bearing registration no. MH-02-C-2924.
(iii) The appellant left the scooter on the pretext of urgent work and said that he would take it away after 5 to 10 minutes.
(iv) He identified the appellant before the Court.
(v) Earlier, he had identified the appellant in the TIP held on 13.05.1993 by Sharad Vichare (PW-459) for which Memorandum Panchnama Exhibit Nos. 1459 and 1459-A were prepared by him.

Ms. Farhana Shah, learned counsel for the appellant contended that the evidence of PW-21 is contradictory to that of PW-453, who is a Constable and PW-547, PI Jadhav, in view of the above, we are unable to accept the

said argument. Equally, her claim that PW-21 is not trustworthy and his evidence should be discarded, is liable to be rejected.

Deposition of Tukaram Ganpat Shelambkar (PW-25)

PW-25 is an eye-witness to the occurrence. He was a hawker in Zaveri Bazaar. From his deposition, the following facts emerge:

(i) He had an argument with the appellant as he wanted to park the scooter at the place where PW-25 wanted to sell his goods.
(ii) The appellant parked the scooter and left away.
(iii) He identified the Bajaj blue coloured scooter MH 2924 (Article 22) which was parked on 12.03.1993 at the Police Station.
(iv) He identified the appellant in the TIP held on 21.03.1993 and 13.05.1993 conducted by Shri Vasant Kamble (PW-462) and Shri Sharad Vichare (PW-459) respectively. Though he failed to identify the appellant in the Court, he identified the scooter which was parked at Dhanji Road.

From the materials on record, it is clear that the identity of the appellant who parked the blue scooter bearing registration no. MH-02-C-2924 has been established.

87) It was contended by Ms. Farhana Shah, learned counsel for the appellant that PW-25 has not identified the appellant before the Court, so his evidence should not be relied upon. It is to be noted that the witness deposed before the Court on 13.12.1995, i.e., after a lapse of two and a half years after the incident. After a gap of more than two years, it is plausible that memory could have faded and accordingly the witness failed to identify him before the court. However, during the identification parades, which were conducted soon after the incident, PW-25 identified the appellant to be the person who quarreled with him and parked the scooter at Diamond House. The deposition of PW 25 also corroborates with the evidence of PW-21.

Subhash Dattaram Jhadav (PW-547)

PW-547 is a police officer and was attached with L.T. Marg Police Station as PI. He deposed as under:

(i) He reached the spot along with Panch witnesses and Inspector Nand Kumar Chaugule (PW-444).
(ii) He saw the dickey of the scooter full of a blackish oily substance with pallets and he also saw one pipe and three tubes embedded in the said material.
(iii) He took sample of the blackish material and the remaining material was taken out and sealed in bags.
(iv) He drew a spot Panchnama being Exhibit 1447

The above fact is also corroborated by the deposition of Nandkumar Chaugule (PW-444), who was an Inspector and has deposed about the fact of going to Diamond House and defusing the detonator which was inserted in the blackish substance.

The abovesaid articles were seized and sent to FSL for opinion vide letter Exhibit No. 1866. The FSL Report Exhibit No. 1867 confirms that the material which was taken out from the dickey of the scooter was highly explosive substance.

Purchase of Bajaj Scooter

The scooter bearing registration No. MH-02-C-2924 (Article 22) was purchased by Anwar Theba (AA) which fact has been proved by Shamshudin Shaikh (PW-268), who was engaged in the business of buying and selling motorbikes and scooters. He deposed that he knew Anwar Theba (AA) and had sold the said scooter to him for a cost of Rs. 19,000/- which was paid by him in cash. The deposition of PW-268 is marked as Exhibit 1113.

Deposition of Shankar B. More (PW 275)

PW-275 was working as a Pump Operator for water pump installed at Nutan Nagar Cooperative Society. Besides this, he used to clean the vehicles of the members residing in the society for which they used to pay him. He identified the scooter bearing Registration No. MH-02-C-2924 (Art. 22) and informed that it belonged to Anwar Bhai as he used to clean the

scooter for him.

88) In the earlier part of our order, we have expressed our views about the acceptability of the statement of Md. Usman Jan Khan (PW-2), validity of the confessional statement of the accused as well as co-accused implicating the appellant (A-15) and his relationship with Tiger as well as the part played by him in association with him. Learned counsel for the appellant prayed for discarding his confession. However, in view of the explanation and the evidence of I.O.s and recording officers, discussion and ultimate conclusion of the Designated Court, we reject her request. The appellant's involvement in landing, his association with Tiger Memon, participation in planting scooter bomb have been fully established by the prosecution. We agree with the conclusion arrived at by the Designated Court.

Sentence:

89) Even at the beginning, Ms. Farhana Shah, learned counsel appearing for the appellant highlighted that out of the life imprisonment, the appellant had served nearly 14 years in jail. She also highlighted that the appellant is suffering with AIDS/HIV+ and is a sick person. She also placed his treatment particulars furnished by J.J. Hospital and recent medical reports showing his CD Count and his Blood Count. She further pointed out that in spite of continuous treatment, even at this stage, he is suffering from AIDS. As a matter of fact, considering his health condition, this Court has granted him interim bail on medical grounds and that is being continued even now. The fact that the appellant is suffering from AIDS/HIV+ has not been disputed by the CBI. Taking note of all these aspects including the fact that he was in jail nearly for 14 years, while confirming the conviction and sentence, in view of special circumstances, though the life sentence is the appropriate sentence for the proved charges, we order that there is no need to send him back to prison. In the peculiar circumstance, we make it clear that the period already undergone would be sufficient and with this direction, we dispose of his appeal.

Criminal Appeal No. 1224 of 2007

Smt. Vimal Thapa W/o Late
Somnath Kakaram Thapa (A-112) ... Appellant(s)

vs.

The State of Maharashtra ..... Respondent(s)

90) Mr. Jaspal Singh, learned counsel appeared for the appellant, who is wife of A-112 and Mr. Mukul Gupta - learned senior counsel duly assisted by Mr. Satyakam, learned counsel for the respondent (CBI).

91) Late Shri S.K. Thapa - Accused No. 112 died during the pendency of this appeal because of lungs cancer. His widow has stepped in and is pursuing this appeal. The above said appeal is directed against the final judgment and order of conviction and sentence dated 28.11.2006 and 20.07.2007 respectively, whereby A-112 (husband of the appellant herein) was convicted and sentenced to rigorous imprisonment (RI) for life by the Designated Court under TADA for the Bombay Bomb Blast Case, Greater Bombay in B.B.C. No.1/1993.

92) Late Shri S.K. Thapa belonged to the 1972 batch of Indian Custom Excise Service. In the year 1993, he was posted as Additional Collector of Marine and Preventive Wing of Customs, Collectorate at Bombay. The other wing of the Collectorate was Rummaging and Intelligence and at the relevant time, Shri M.N. Dholphode (PW-171) was the Additional Collector and the Customs (Preventive) Collectorate was headed by Shri S.K. Bhardwaj (PW-470).

Charges:

93) A common charge of conspiracy was framed against all the co-conspirators including A-112. The relevant portion of the said charge is reproduced hereunder:

> "During the period from December, 1992 to April, 1993 at various places in Bombay, District Raigad and District Thane in India and outside India in Dubai (U.A.E.) and Pakistan, entered into a criminal conspiracy and/or were members of the said criminal conspiracy whose object was to commit terrorist acts in India and that you all agreed to commit following illegal acts, namely, to commit terrorist acts with an intent to overawe the Government as by law established, to

strike terror in the people, to alienate sections of the people and to adversely affect the harmony amongst different sections of the people, i.e. Hindus and Muslims by using bombs, dynamites, hand grenades and other explosive substances like RDX or inflammable substances or fire-arms like AK-56 rifles, carbines, pistols and other lethal weapons, in such a manner as to cause or as likely to cause death of or injuries to any person or persons, loss of or damage to and disruption of supplies of services essential to the life of the community, and to achieve the objectives of the conspiracy, you all agreed to smuggle fire-arms, ammunitions, detonators, hand grenades and high explosives like RDX into India and to distribute the same amongst yourselves and your men of confidence for the purpose of committing terrorist acts and for the said purpose to conceal and store all these arms, ammunitions and explosives at such safe places and amongst yourselves and with your men of confidence till its use for committing terrorist acts and achieving the objects of criminal conspiracy and to dispose off the same as need arises. To organize training camps in Pakistan and in India to import and undergo weapons training in handling of arms, ammunitions and explosives to commit terrorist acts. To harbour and conceal terrorists/co-conspirators, and also to aid, abet and knowingly facilitate the terrorist acts and/or any act preparatory to the commission of terrorist acts and to render any assistance financial or otherwise for accomplishing the object of the conspiracy to commit terrorist acts, to do and commit any other illegal acts as were necessary for achieving the aforesaid objectives of the criminal conspiracy and that on 12.03.1993 were successful in causing bomb explosions at Stock Exchange Building, Air India Building, Hotel Sea Rock at Bandra, Hotel Centaur at Juhu, Hotel Centaur at Santacruz, Zaveri Bazaar, Katha Bazaar, Century Bazaar at Worli, Petrol Pump adjoining Shiv Sena Bhavan, Plaza Theatre and in lobbing handgrenades at Macchimar Hindu Colony, Mahim and at Bay-52, Sahar International Airport which left more than 257 persons dead, 713 injured and property worth about Rs.27 crores destroyed, and attempted to cause bomb explosions at Naigaum Cross Road and Dhanji Street, all in the city of Bombay and its suburbs i.e. within Greater Bombay. And thereby committed offences punishable under Section 3(3) of TADA (P) Act, 1987 and Section 120-B of IPC read with Sections 3(2)(i)(ii), 3(3)(4), 5 and 6 of TADA (P) Act, 1987 and read with Sections 302, 307, 326, 324, 427, 435, 436, 201 and 212 of Indian Penal Code and offences under Sections 3 and 7 read with Sections 25 (1A), (1B)(a) of the Arms Act, 1959, Sections 9B (1)(a)(b)(c) of the Explosives Act, 1884, Sections 3, 4(a)(b), 5 and 6 of the Explosive Substances Act, 1908 and Section 4 of the Prevention of Damage to Public Property Act, 1984 and within my cognizance."

In addition to the above-said principal charge of conspiracy, A-112 was also charged on the following counts:

"In addition, to Charge First, you accused, Somnath Kakaram Thapa is also charged for having committed the following offences in pursuance to the Criminal Conspiracy described in Charge First: -

At head Secondly; That you Somnath Kakaram Thapa during the period you were posted as Additional Collector of Customs, Preventive, Bombay and particularly during the period from January, 1993 to February, 1993 in pursuance of the aforesaid criminal conspiracy and in furtherance of its object abetted and 'knowingly facilitated the commission of terrorists' acts and acts preparatory to terrorists' act, i.e., bomb blast and such other acts which were committed in Bombay and its suburbs on 12.03.1993 by intentionally aiding, and abetting Dawood Ibrahim Kaskar, Mohmed Dosa and Mushtaq @ Ibrahim @ Tiger Abdul Razak Memon and their associates and knowingly facilitated smuggling of arms, ammunitions and explosives which were smuggled into India by Dawood Ibrahim Kaskar, Mohammed Dossa, Mushtaq @ Ibrahim @ Tiger Abdul Razak Memon and their associates for the purpose of committing terrorists acts by your non- interference inspite of the fact that you had specific information and knowledge that arms, ammunitions and

explosives were being smuggled into the country by terrorists and as Additional Collector of Customs, Preventive, you were legally bound to prevent it and that you thereby committed an offence punishable under Section 3(3) of TADA (P) Act,1987 and within my cognizance."

94) The charges mentioned above were proved against A-112 and he had been convicted and sentenced for the above said charges as under:

Conviction and Sentence:
i) A-112 has been convicted for the offence of conspiracy under Section 3(3) of TADA and Section 120-B of IPC read with the offences described at head firstly and sentenced to RI for life along with a fine of Rs. 1,00,000/-, in default, to further undergo RI for 3 years. (charge firstly)
ii) A-112 has also been convicted under Section 3(3) of TADA for commission of offences at head secondly and sentenced to RI for life along with a fine of Rs. 1,00,000/-, in default, to further undergo RI for 3 years. (charge secondly)
Evidence
95) The evidence against A-112 is in the form of:-
(i) confessions made by other co-conspirators; (co-accused);
(ii) testimony of prosecution witnesses; and
(iii) documentary evidence.

96) It is brought to our notice that A-112 was one of the two Additional Collectors who were posted at Bombay. He was Additional Collector (Marine and Preventive) Wing and 8 Assistant Collectors were reporting to him including Shri R.K. Singh (A-102) who was Assistant Collector for Alibaug Division.
Confessional Statements of co-accused:

Confessional Statement of Mohd. Kasam Lajpuria @ Mechanic Chacha (A-136)

97) Confessional statement of A-136 under Section 15 of TADA has been recorded on 09.11.1999 (15:40 hrs.) and 10.11.1999 (09:00 hrs.) by Shri O.P. Chhatwal (PW-684), the then S.P., CBI-STF, New Delhi. A-136 was working as a driver for Mohd. Dossa (AA). A brief summary of his confession with regard to A-112 is reproduced hereunder:
(i) About 6-8 months prior to the blasts, a meeting was held between Mohd. Dossa and the Collector Thapa Saheb (A-112) in President Hotel which was organized by Customs Officer Iqbal Singh.
(ii) A-112 went to the Hotel with Iqbal Singh.
(iii) A-112 told Mohd. Dossa that he can continue with his smuggling activities but for that he has to give some cases of seized goods of smuggling.
(iv) On 09.01.1993, arms were unloaded at Dighi Jetty.
Upon perusal of the confession of A-136 it is clear that A-112 agreed to render help to Mohd. Dossa for the smuggling activities.
98) It has been contended by Mr. Jaspal Singh on behalf of A-112 that the fact that A-112 met Mohd. Dossa has been held against him by the trial court, however, merely meeting with a smuggler is not sufficient since his job was to control smuggling and Customs Officers often mix with smugglers to make seizures or increase the number of their informants. It is also contended that there is no direct evidence that A-112 aided Mohd. Dosa or other smugglers. It is further contended by Mr. Jaspal Singh that the confession of A-136 makes it clear that meeting of A-112 with Mohd. Dosa took place before the conspiracy started.
99) In an answer, the counsel for the CBI submitted that although ex-facie it appears that the case against A-112 is of dereliction of duty and negligence, a closer scrutiny of the entire evidence on record would show that the appellant had a connection and understanding with the smugglers in order to facilitate a safe passage to them. It is further submitted that at the same time A-112 has created the record to show that he has done possibly everything in his official capacity to prevent the smuggling of arms and ammunitions.
100) It has been established through the confession of A-136 that there was a meeting between A-136, Mohd. Dossa and Dawood Ibrahim, where they agreed to take revenge for the atrocities committed against the Muslims. A

similar meeting of Tiger Memon with Dawood Ibrahim and A-14 has also been proved through the confession of A-14. The confession of A-136 also establishes that arms and ammunitions were sent by Mustafa Dosa, who was the brother of Mohd. Dosa, for which A-134 was instructed by Mohd. Dosa to make arrangements. Apart from the confession of A-136 which indicates the link between Mohd. Dosa and A-112, it has also emerged that A-112 was acquainted with Tiger Memon.

Confessional Statement of Mohmed Sultan Sayyed (A-90)

Confessional statement of A-90 under Section 15 of TADA has been recorded on 29.04.1993 and 30.04.1993 (14:30 hrs.) by Shri C. Prabhakar (PW-186), the then Superintendent of Police, Thane Rural, Camp Alibaug (Raigad). A-90 was working as a Superintendent, Marine and Preventive Wing of Customs, Alibaug Circle. A-90 was working under the orders of Shri R.K. Singh, (A-102), Assitant Collector. In his confessional statement A-90 stated that A-102 had told him that A-112 had asked him (A-102) to meet Dawood Phanse (A-14) who was a landing agent.

101) It was contended by Mr. Jaspal Singh on behalf of A-112 that the confessional statements of the co-accused relied upon by the prosecution were recorded by a police officer and it is not safe to base the conviction on the said confessions under Section 15 of TADA. This aspect has been elaborately dealt with in the appeal of A-1. In view of our conclusion therein, there is no need to discuss the same once again.

Deposition of Prosecution Witnesses:

102) Apart from the aforesaid evidence, the involvement and the role of A-112 in the conspiracy, as stated above, is disclosed by the deposition of various prosecution witnesses which are as under:

Deposition of Akbarkhan Munawarkhan Pathan (PW-98)

PW-98 was an Inspector posted in the Night Mobile Patrolling Unit of Marine and Prevention Wing of Customs Department. From his deposition, the following facts emerge:

(i) He knew A-112 as he was his superior officer in the year 1993.

(ii) PW-98 identified A-112 in the court during the dock proceedings.

(iii) On 30.01.1993, A-112 gave instructions to other officers to assemble in the Thane office.

(iv) After the meeting, they all first went to Indraprastha Hotel at Nagothane and then reached Purar Phata in Raigad district by sunset following A-112.

(v) PW-98 deposed that A-112 gave officers their positions at the spot.

(vi) PW-98 deposed that A-112 told the officers that contraband was to be smuggled into India by Tiger Memon and he will be coming in a commander jeep and would be sitting next to the driver with his body guards sitting at the rear side, fully armed and in a ready position to fire. A-112 also told the officers that a truck or tempo will be carrying the contraband following the jeep.

(vii) PW-98 deposed that A-112 told that they have to intercept the convoy and affect the seizure.

(viii) PW-98 deposed that they took positions and waited at the spot for about 5 hours upto midnight and thereafter A-112 called them up and asked to be in touch with him in Bombay office. Thereafter, the operation was called off.

(ix) On 31.01.1993, the officers along with A-112 went to Dehan Phata where he gave the same instructions as given at Purar Phata and surveillance was kept for the same person (Tiger Memon). After waiting for six hours, A-112 called off the ambush as no convoy arrived carrying contraband.

(x) Thereafter, no instructions were received from A-112 after 31.01.1993.

(xi) PW-98 also proved Exh. Nos. 530 and 531, Reports prepared by him about the operations at Purar Phata and Dehan Phata in the night of 30/31.01.1993 respectively.

(xii) PW-98 stated that there was discussion between Mr. Madhav Sriram Agharkar (PW-99) (Senior most Inspector in the raiding party) and A-112 who made a suggestion that we should maintain the watch near the junction.

(xiii) PW-98 deposed that he does not remember the junction today but stated that A-112 told Mr. Agarkar that the said place was the best

place to keep the watch and as per the information, the said place was the perfect place for interception.

(xiv) On 31st January, in the night around 10:30 p.m., A-112 had sent a party to Shekhadi to see if there was any activity there. PW-98 and Mr. Mhatre were also there in that party.

103) Upon perusal of the aforesaid deposition, it is clear that A-112 had specific information that contraband was being smuggled into India by Tiger Memon and will be transported in a Truck or Tempo and that Tiger Memon will accompany the same and will be seated next to the driver and body guards will sit in the rear side armed with guns in ready to shoot position.

104) It is also clear that the above fact shows that A-112 was aware of even minute details of travel of Tiger Memon with contraband. It is further submitted that it is also clear that A-112 also did not pay any heed to the suggestion of PW-99 who was a senior Inspector and suggested a better place for watch.

Deposition of Madhav Sriram Agharkar (PW-99)

105) PW-99 was an Inspector of Customs (Marine and Preventive) Wing. From his testimony, the following facts emerge:

(i) A-112 called him on 30.01.1993 and told him to reach Thane office.

(ii) He was further instructed to arrange for a Tempo and a Maruti Van.

(iii) A-112 told him that he had specific information about the landing of contraband silver on a particular route at a particular place.

(iv) A-112 then asked PW-99 to suggest the best place for keeping a watch. As the information had revealed that the contraband silver was to be landed somewhere at Shekhadi and Shrivardhan area and the same was to be transported via Mhasala-Goregaon road, PW-99 suggested him two spots for keeping a watch at Purar Phata and Dehan Phata

(v) A-112 asked all of them to leave the Thane Office and to proceed towards Nagothane. He also accompanied them.

(vi) All the officers including A-112 left Nagothane at about 5.00 p.m. and went to Purar Phata and reached there by sunset.

(vii) After reaching Purar Phata, A-112 called the other Inspectors who were accompanying the squad and disclosed the information that the 'contraband silver would be transported in transport vehicles such as Truck or Tempo and that Tiger Memon would be piloting the said transport vehicles in the open Commander Jeep and he would be sitting beside the driver with three to four bodyguards sitting behind him and all of them would be fully armed'.

(viii) Before taking positions at 'Purar Phata', PW-99 told A-112 that junction of Mhsala- Saimorbaugh- Mangaon Road and Mhsala- Goregaon Road would be better for keeping surveillance and suggested the said spot in order to cover both the said routes coming from Mhasala to Bombay.

(ix) A-112 responded and said that his information was specific that goods will go through 'Purar Phata' Road.

(x) At about midnight, A-112 called off the watch/operation

(xi) Again, they went to Dehan Phata where A-112 told them that the previous day information was also for Dehan Phata.

(xii) Thereafter, the operation was called off at midnight by A-112 who also told that he will give information if watch has to be continued on the next day. PW-99 deposed that no information was received from A-112.

(xiii) The witness also proved the reports regarding operation on 30th and 31st January 1993, bearing Exh. Nos. 530 and 531 which were prepared by PW-98.

(xiv) He identified A-112 before the court.

(xv) In the second week of February 1993, A-112 had asked PW-99 to find out whether any chemical in liquid form, packed in barrels, had been landed by Tiger Memon at Shekhadi.

Hence, the deposition of PW-99 corroborates and supports the deposition of PW-98.

106) Mr. Jaspal Singh, learned counsel for the defence contended that A-112 acted immediately after he received the information about landing/smuggling of arms and set up an ambush. The fact that ambush could have been set up at a better location (i.e., at the intersection of two roads going to Bombay) with benefit of hindsight cannot be held against A-112.

107) It is further contended that no evidence establishes that A-112 deliberately set up the ambush at one road so as to permit the vehicles

carrying arms to take the other road to Bombay.

108) The above submissions are unacceptable. The evidence of PW-99 establishes that the setting up of the ambush at the place of choice of A-112 was done deliberately by him. A-112 told his subordinates that he has specific information about the particular route and time of landing. A-112 also told them about Tiger Memon. A-112 further told them that he has specific information that they will go through Purar Phata. A-112 called off the vigil at midnight and does not organize the same after 31st. Ex-facie it appears that it could have been an error of judgment of the officer. None of the information on record shows the smuggling of arms would be conducted by Tiger Memon; the said goods would be transported through Purar Phata; and it would be done only on 30th and 31st night.

109) From the topography of the area, it is also clear that the vigil at Purar Phata was kept deliberately to provide a safe passage to the smugglers:

[pic]

As rightly pointed out by the prosecution, from the aforesaid topography, it is clear that the ambush could have been kept at the junction as suggested by PW-99 which could have covered both the routes to Bombay. The materials clearly show that A-112 knowingly directed Nakabandi at 'Purar Phata' and "Behar Phata' which left Sai-Morba Road route open for the smugglers to travel safely.

110) It is also brought to our notice that A-112 also spread rumour of a specific information when there was none. It is also not clear as to why the vigil was called off at midnight when as a matter of practice smuggling takes place after midnight. It is also not clear why no vigil was kept after 31st night of January, 1993. All the aforesaid was justified on the basis of non-existence of specific information.

111) The above said conduct of A-112 has to be considered in the light of the fact that A-112 was duly informed by his superior that they have intelligence that ISI may send weapons along with silver or gold. The said information requested the Officer to be alert. It is also to be seen that the information of the above said landing was the first such information after the alert notice of 25.01.1993. The said information, amongst others, has been proved by PW-470.

Deposition of SR Bharadwaj (PW-470)

112) PW-470 was working as Collector of Customs (Preventive) at Bombay. From his testimony, the following facts emerge:

(i) He was the senior officer and A-112 was working under him.

(ii) On 24/25.01.1993, he received information from DRI that some ISI syndicate located in Middle-East may try to smuggle contraband items into India. He told A-112 and A-102 about this information.

(iii) A-112 told him in the end of January that there was no landing of contraband since either the information was leaked or the movement of customs officials was known. PW-470 told A-112 to ask the local officers to keep the track of the said information.

A perusal of deposition of PW-470 establishes that he asked A-112 to ask local officers to keep track of the said information and further he had issued a letter being Exhibit No. 1536 informing Mr. R.K. Singh (A-102) about landing of large quantity of automatic weapons in next 15-30 days. This letter was copied to A-112 also. The evidence of PW-470 has to be considered in the light of the conduct of A-112, emerging from the evidence of PW-98 and PW-99.

Deposition of Bhaskar Krishanji Naik (PW-168)

PW-168 was working as a Superintendent, Customs (Marine and Preventive) Wing since 28.12.1992, in Central Intelligence Unit (C.I.U.) at Everest House, Bombay. He identified in the Court the entry in the Inward Register marked as X-181 pertaining to the confidential letter written by PW-470 to R.K. Singh and which was also forwarded to A-112 stating that large quantity of automatic weapons along with contraband items like gold and silver were likely to land around Bombay in the next 15-20 days, and therefore, necessary action should be taken.

113) The deposition of this witness proves that A-112 had been informed well in advance that landing of arms was going to take place and it could happen anytime within 15-20 days from the time the letter was written, i.e., 25.01.1993.

114) Inspite of clear information that large quantity of automatic weapons will land in next 15 days, A-112 only kept ambush for 2 days and that too at wrong places and also spread a rumour that the place was appropriate,

since he has a specific information.

Deposition of Vishwambhal M. Doiphode (PW-171)

115) PW-171 was Additional Collector of Customs (Rummaging and Intelligence) Bombay. From his testimony, the following facts emerge:

(i) He knew A-112 as he was also working under the Collector of Custom (Preventive), Shri S.K. Bharadwaj (PW-470).

(ii) The word 'Panther' is used to denote 'Additional Collector'.

(iii) On the night of 01.02.1993, he received a call at about 2 a.m. from his sources informing him that landing of contraband was taking place at Mhasla. PW-171 immediately told the same to A-112.

(iv) A-112, thereafter, gave an alert message to Mhasla, Bankot and Alibaug divisions.

It is pointed out by the prosecution that deposition of PW-171 clearly establishes that A-112 alerted the customs officials at Bankot and Alibaug also whereas the information received was for landing at Mhasla only.

116) It is argued on the side of the CBI that the paper work of giving alert was done by A-112 since the message was given by an Additional Collector and something was to be shown to have been done. Exhibit 2594 - X-711 is the VHF Radio logbook. The relevant extract of message reads as under:

> "Something has happened at Bankot therefore maximum alert to be kept at D-31 division starting immediately"

It shows that A-112 had asked to keep a strict vigil at Bankot in the face of clear and specific information that the landing was to take place at Mhasla. The said specific information was distorted as well as converted into a vague message that something is happening in the Alibaug division which is a very big division. In view of the specific information given by a senior officer, the message circulated by A-112 about Bankot was completely misleading since Bankot is about 45 kms. from Mhasla.

Deposition of Liladhar Dattaray Mhatre (PW-172)

117) PW-172 was an Officer in Central Excise Department in Bombay. From his testimony, the following facts emerge:

(i) He received information on 29.01.1993 from his sources that landing of silver was to take place at Shekhadi on 29/31.01.1993.

(ii) He immediately told A-112 about this information.

(iii) PW-172 received information after about 7-8 days (around 5th or 6th February) that instead of silver, landing of some chemical had taken place on 03.02.1993 at Shekhadi. He told A-112 about this information and A-112 said 'kya ho sakta hai'? (what can be done) and in cross PW-172 says 'Acha thik hai, main dekhta huin kya hoga' (let me see what can be done).

118) The conduct of A-112 has to be considered in the light of the letter dated 25.01.1993 proved by PW-470. It may also be considered that the second landing could have been obstructed, if immediate action on the said letter was taken. Even the said arms and ammunitions which landed on 03.02.1993 could have been traced, if the said information was shared with the Customs Department as well as the Police. The appellant not only avoided alerting the Department, but also did not share the said piece of information till 25.03.1993 with the Department.

119) It has been contended by learned senior counsel for A-112 that he was surprised to hear about the landing of chemicals instead of silver and thus it can be inferred that A-112 was not aware of the landing of RDX at Shekhadi. As per the letter issued by PW-470, the information was specific that automatic weapons were to land in next 15-20 days near Bombay. Inspite of this clear information, A-112 only kept ambush for two days and told the officers on duty that he will issue directions, if further ambush is required. We are also satisfied that A-112 deliberately did not keep a vigil at the required place and even after the information the chemical had landed and he did not take any steps to further pass on the information until 25.03.1993. It may also be seen in the light of his conduct of diverting attention of the Department from Mhasla to Bankot despite there being specific information from a senior officer of landing on 1st/2nd of February.

Deposition of Vivek Vishwanath Kadam (PW-163)

120) PW-163 was Inspector of Customs, Marine Preventive. From his testimony, the following fact emerges:

(i) A-112, in a meeting of Customs officials told S.K. Bharadwaj (PW-470) and other officers present that 60 drums of liquid chemicals had landed somewhere at the coast. The meeting took place on 25.03.1993.

(i) A-112 did not tell in the meeting that he had received the information of landing that took place on 03.02.1993 on the next day itself.
(ii) A-112 did not disclose that he had information about the landing any time before 25.03.1993.

The above evidence proves that A-112 had information about the landing that took place on 03.02.1993; however, he chose not to share it with the other officers.

Deposition of Prabhakar Natarajan (PW-152)

PW-152 was an Inspector of Customs at Shrivardhan Post. From his testimony, the following facts emerge:

(i) On 25.03.1993, a meeting was called by the Collector of Customs at the Customs Office at Murud where A-112 remarked that a landing of chemicals might have taken place at Shekhadi during the first week of February.
(ii) Until the said date, i.e. 25.03.1993, S.N. Thapa had not taken any action regarding any landing of RDX which was said to have taken place at Shekhadi on 03.02.1993.
(iii) A-112 did not tell the other officers in the meeting that he had information about the landing.

Deposition of Saryuprasad Ramnivaj Maurya (PW-100)

PW-100 was working in the Customs Office, Shrivardhan as an O.T.C. (Operator Tele Communication). His duty was to send and receive wireless messages. He deposed as under:-

(i) He deposed that the record of message received and sent on wireless is maintained by recording the same in VHF/Wireless log book.
(ii) He was shown the VHF radio log book for a period from 11.11.1992 to 06.04.1993;
(iii) He proved Exh. No. 534 (Box No. 17) in court which is the VHF Radio log for 02.02.1993. This message was received from Bombay by Additional Collector of Customs. A-112 was the then Additional Collector of Customs in Bombay. The entry of 02.02.1993 was marked as Exh. No. 534A.
(iv) Panther word is wireless code for Additional Collector (i.e. A-112).

121) In view of the above, the following facts emerge:

(i) A-112 was fully aware of the information that the weapons of mass destruction may be smuggled to India along with silver and gold;
(ii) He kept vigil at a place which leaves room for the smugglers to escape from another route to Bombay under the guise of specific information;
(iii) He failed to produce any such specific information ever;
(iv) A-112 told that he has specific information that Tiger Memon is going to come through that route in a particular manner;
(v) Actually, there was no specific information that the smuggler was Tiger Memon and that he was to pass through a particular route;
(vi) The onus was on the accused to prove his specific information for a particular course of conduct undertaken by him;
(vii) He also spread rumour of specific information to mislead and misguide the Department so as to help the smugglers;
(viii) He mis-directed the Department by distorting a specific message of landing at Mhasla to be something happening at Bankot about 45 kilometers away from Mahasla, particularly, when the said information came from a senior officer of the Department;
(ix) He failed to explain as to why he did that;
(x) He further failed to take account of what was done pursuant to the said information;
(xi) He did not do anything on specific information that along with Silver some chemicals have arrived at Shekhadi on 03.02.1993; and
(xii) Any timely action on the part of A-112 could have traced the smuggled goods. The said action could have prevented second landing that took place subsequently.

122) All the above said circumstances cumulatively establish the charges framed against A-112 at the trial. The said circumstances leave no room for any alternative hypothesis. We are also satisfied that pursuant to a conspiracy with Tiger Memon and his other co-conspirators, A-112 misused his official position in order to knowingly facilitate the terrorist act.

123) Under these circumstances, we are satisfied that the prosecution has established the guilt against the appellant and the Designated Court has rightly convicted him and sentenced him. Since he died during the pendency of this appeal, there cannot be any direction except confirming the decision of the Designated Court and clarifying the position. The appeal is disposed of accordingly.

Criminal Appeal No. 1440 of 2007

Muzammil Umar Kadri (A-25) ... Appellant(s)

vs.

The State of Maharashtra
through CBI-STF, Mumbai ... Respondent(s)

AND

Criminal Appeal No. 1028 of 2012

The State of Maharashtra
through CBI-STF, Mumbai ... Appellant(s)

vs.

Muzammil Umar Kadri (A-25) ... Respondent(s)

124) Heard Mr. Mushtaq Ahmad, learned counsel for the appellant (A-25) and Mr. Mukul Gupta, learned senior counsel duly assisted by Mr. Satyakam, learned counsel for the CBI.

125) Criminal Appeal No. 1440 of 2007 is directed against the final judgment and order of conviction and sentence dated 16.10.2006 and 30.05.2007 respectively, whereby the appellant (A-25) has been convicted and sentenced to rigorous imprisonment (RI) for life by the Designated Court under TADA for the Bombay Bomb Blast Case, Greater Bombay in B.B.C. No.1/1993. Criminal Appeal No. 1028 of 2012 is filed by the CBI against the acquittal of A-25 insofar as the charge framed at head firstly, i.e., Conspiracy. For convenience, henceforth, we will refer accused (A-25) as the appellant.

Charges:

126) A common charge of conspiracy was framed against all the co-conspirators including the appellant (A-25). The material part of the said charge is reproduced herein:

> "During the period from December, 1992 to April, 1993 at various places in Bombay, District Raigad and District Thane in India and outside India in Dubai (U.A.E.) and Pakistan, entered into a criminal conspiracy and/or were members of the said criminal conspiracy whose object was to commit terrorist acts in India and that you all agreed to commit following illegal acts, namely, to commit terrorist acts with an intent to overawe the Government as by law established, to strike terror in the people, to alienate sections of the people and to adversely affect the harmony amongst different sections of the people, i.e. Hindus and Muslims by using bombs, dynamites, hand grenades and other explosive substances like RDX or inflammable substances or fire-arms like AK-56 rifles, carbines, pistols and other lethal weapons, in such a manner as to cause or as likely to cause death of or injuries to any person or persons, loss of or damage to and disruption of supplies of services essential to the life of the community, and to achieve the objectives of the conspiracy, you all agreed to smuggle fire-arms, ammunitions, detonators, hand grenades and high explosives like RDX into India and to distribute the same amongst yourselves and your men of confidence for the purpose of committing terrorist acts and for the said purpose to conceal and store all these arms, ammunitions and explosives at such safe places and amongst yourselves and with your men of confidence till its use for committing terrorist acts and achieving the objects of criminal conspiracy and to dispose off the same as need arises. To organize training camps in Pakistan and in India to import and undergo weapons training in handling of arms, ammunitions and explosives to commit terrorist acts. To harbour and conceal terrorists/co-conspirators, and also to aid, abet and knowingly facilitate the terrorist acts and/or any act preparatory to

the commission of terrorist acts and to render any assistance financial or otherwise for accomplishing the object of the conspiracy to commit terrorist acts, to do and commit any other illegal acts as were necessary for achieving the aforesaid objectives of the criminal conspiracy and that on 12.03.1993 were successful in causing bomb explosions at Stock Exchange Building, Air India Building, Hotel Sea Rock at Bandra, Hotel Centaur at Juhu, Hotel Centaur at Santacruz, Zaveri Bazaar, Katha Bazaar, Century Bazaar at Worli, Petrol Pump adjoining Shiv Sena Bhavan, Plaza Theatre and in lobbing handgrenades at Macchimar Hindu Colony, Mahim and at Bay-52, Sahar International Airport which left more than 257 persons dead, 713 injured and property worth about Rs.27 crores destroyed, and attempted to cause bomb explosions at Naigaum Cross Road and Dhanji Street, all in the city of Bombay and its suburbs i.e. within Greater Bombay. And thereby committed offences punishable under Section 3(3) of TADA (P) Act, 1987 and Section 120-B of IPC read with Sections 3(2)(i)(ii), 3(3)(4), 5 and 6 of TADA (P) Act, 1987 and read with Sections 302, 307, 326, 324, 427, 435, 436, 201 and 212 of Indian Penal Code and offences under Sections 3 and 7 read with Sections 25 (1A), (1B)(a) of the Arms Act, 1959, Sections 9B (1)(a)(b)(c) of the Explosives Act, 1884, Sections 3, 4(a)(b), 5 and 6 of the Explosive Substances Act, 1908 and Section 4 of the Prevention of Damage to Public Property Act, 1984 and within my cognizance."

In addition to the aforesaid principal charge of conspiracy, the appellant (A-25) was also charged on other counts which are summarized as under:

At head Secondly; He committed an offence punishable under Section 3(3) of TADA by participating in the landing and transportation of smuggled arms, ammunitions and explosives at Shekhadi for the purpose of committing terrorist acts.

At head Thirdly; In or around January 1993, with intent to aid terrorists, he possessed 16 AK-56 rifles and 26 magazines in contravention of the provisions of the Arms Act, 1959 and the Arms Rules, 1962 and thereby committed an offence punishable under Section 6 of TADA.

At head Fourthly; By possessing the aforementioned rifles and magazines, he committed an offence punishable under Section 3 and Section 7 read with Sections 25(1-A) and 25 (1-B)(a) of the Arms Act, 1959.

Conviction & Sentence

127) The appellant has been convicted and sentenced for the above said charges as under:

(i) The appellant has been convicted for the offence of conspiracy under Section 3(3) of TADA read with Section 120-B of IPC read with the offences described at head firstly and sentenced to RI for life along with a fine of Rs. 50,000/-, in default, to further undergo RI for 1 year. (charge firstly)

(ii) The appellant has also been convicted for the offence under Section 3(3) of TADA and sentenced to RI for 10 years along with a fine of Rs. 25,000/-, in default, to further undergo RI for 6 months. (charge secondly)

(ii) The appellant has also been convicted for the offence under Section 6 of TADA and sentenced to RI for 14 years along with a fine of Rs. 50,000/-, in default, to further undergo RI for 1 year. (charge thirdly)

(iii)

1. The appellant has also been convicted for the offences punishable under Section 3 and Section 7 read with Sections 25(1-A) and 25(1-B)(a) of the Arms Act, 1959 but no separate sentence was awarded on the said count. (charge fourthly)

128) Mr. Mushtaq Ahmad, learned counsel for the appellant (A-25), after taking us through the relevant materials relied on by the prosecution, submitted that firstly his own confession is not voluntary and not genuine

and, in any event, he retracted the same, hence, the conviction based on his confession is not sustainable. He also submitted that though the prosecution has relied on confessional statement of co-accused, particularly, Dawood @ Dawood Taklya Mohd. Phanse @ Phanasmiyan (A-14), Khalil Ahmed Syed Ali Nazir (A-42) and Sujjad Alam @ Iqbal Abdul Hakim Nazir (A-61), they have not attributed to any specific role of the appellant A-25. He further submitted that the recoveries alleged to have been made by the prosecution are not acceptable and, in any event, it contained several infirmities.

129) Learned counsel appearing for the CBI refuted all the above contentions and after basing reliance on oral and documentary evidence submitted that the prosecution has established the charges leveled against the appellant and the Designated Court has rightly convicted and sentenced him for life.

Evidence

130) The evidence against the appellant (A-25) is in the form of:-

(i) his own confession;
(ii) confessions made by other co-conspirators; (co-accused);
(iii) testimony of prosecution witnesses; and
(iv) documentary evidence.

Confessional Statement of Muzammil Umar Kadri (A-25)

131) The prosecution projected that the involvement of the appellant (A-25) in the conspiracy is evident from his own confession recorded under Section 15 of TADA on 17.04.1993 (14:00 hrs.) and 20.04.1993 (12:00 hrs.) by Shri Sanjay Pandey (PW-492), the then DCP, Zone-VIII, Bombay.

132) It is seen that except the appellant, the recording officer (PW-492) asked all the persons to leave the Chamber and there was no one who could hear and see the proceedings of the same. Thereafter, PW-492 apprised about himself and also ascertained whether he has any complaint against the police and also informed him that he is not bound to make a statement and if such a statement is made, the same can be used against him. He also ascertained whether any police official or any other person threatened him to make a statement etc. After apprising all the formalities and after satisfying himself that the accused is willing to make a statement voluntarily, he directed the officer concerned for production of the accused on 19.04.1993 after expiry of 48 hours. It is further seen that he was produced on 20.04.1993 by API Gaikwad. Again, after putting several questions to ascertain his willingness and genuineness, PW-492 recorded his statement. Though learned counsel for the appellant submitted that he was forced to make such a statement, a perusal of the entire proceedings clearly show that the officer, who recorded the confession, followed the procedure strictly and recorded his statement after satisfying himself that the accused is giving confession voluntarily without any pressure from any corner.

133) We were taken through the entire confession of the appellant. The confession of appellant (A-25) is summarized below:-

(i) At the relevant time, he was an auto-rickshaw driver.
(ii) He was a resident of Mhasla and became acquainted with Dawood Taklya (A-14) who also lived in the same locality. He knew that Taklya was involved in the landing of smuggled goods.
(iii) He also knew that Rahim Laundrywala (deceased accused) and Sharif Abdul Gafoor Parkar @ Dadabhai (A-17) were the partners of Dawood Taklya in the aforesaid activities.
(iv) In or around March-April 1992, he was taken by Dawood Taklya to Shekhadi for unloading of smuggled silver and its transportation to a Tower, at which time, he saw Tiger Memon, Anwar and Shafi (AA). The silver was smuggled by Tiger Memon.
(v) He was paid Rs. 1,200/- by Dawood Taklya for the said assignment.
(vi) Again, in August, 1992, he was taken by Dawood Taklya to Shekhadi for unloading of smuggled silver and its transportation to Waghani Tower, at which time, Rahim Laundrywala and A-17 were also present. He was paid Rs. 1,500/- by Dawood Taklya. The silver was smuggled by Tiger Memon.
(vii) In January, 1993, he was called at the residence of Khalil Ahmed Sayed Ali Nasir (A-42) by Rahim Laundrywala and Shafi and was asked to keep 16 rifles and 32 cassettes at his residence, which he kept with him.
(viii) On 03.02.1993, he escorted the truck carrying the smuggled consignment from Borli to Waghani Tower where he saw Tiger Memon,

Dawood Taklya, A-17, Anwar, Shafi and others.

(ix) On 07.02.1993, Dawood had taken the appellant to Shekhadi in the rickshaw of Sajjad Alam @ Iqbal Abdul Hakim Nazir (A-61) since the appellant had already sold his rickshaw.

(x) On 07.02.1993, at about 11.30 a.m., Dawood Taklya had come to his house in the rickshaw of A-61 and took 3 rifles and 6 magazines out of the 16 rifles and 32 magazines which were kept at his house and told that the message was received from Tiger Memon regarding the same.

(xi) Thereafter, Dawood Taklya also took him in the rickshaw of A-61 to Shekhadi and they reached Shekhadi at about 9.00 p.m.

(xii) Thereafter, Sajjad Alam was told to go to the Tower in the rickshaw and the appellant was asked to get down at Mehendadi.

134) Mr. Mushtaq Ahmad, learned counsel for the appellant, by drawing our attention to Exh. 1654 (Hindi version of his confession) pointed out that there are certain overlappings and corrections, hence, in the absence of any explanation, the same cannot be used against him. In the light of the said contention, we have carefully verified the translated version in English. We find no substance in the said contention. On the other hand, at several places, A-25 conveyed his desire to make a statement and at the end he informed the officer, who recorded the statement, that he understood everything and the entire recorded statement is true and acceptable. In such circumstances, we are unable to accept the stand taken by the appellant. However, though the very same appellant had retracted his confession but the same was done only on 03.10.1993, i.e., after a gap of nearly about 6 months. In the absence of any proper explanation for not retracting immediately after making such a statement, even though he appeared before the Magistrate/senior officers on several occasions, the fact remains that he had not retracted. Even otherwise, as observed in the earlier part of our judgment, a perusal of the retracted statement shows that the same was prepared by someone and he merely signed the same.

135) The panchnama dated 26.03.1993 was prepared in Marathi with regard to recoveries made from A-25. The English translation of the same was also placed on record. Learned counsel for the appellant has pointed out that out of 2 panch witnesses, namely, Mr. Walmik Shankar Gite and Mr. Laxman Loku Karkera, the prosecution has examined Mr. Walmik Shankar Gite only. According to the counsel, he is a resident of Bombay and he was taken by the police to a place which is at a distance of 250 km. The said Panchnama recorded details of arms and ammunitions seized from the house of the appellant. Learned counsel has also pointed out some discrepancy in the signature of panch witnesses. We also verified the xerox copy of the Panchnama dated 26.03.1993 and we do not find any glaring discrepancy as pointed out by the counsel.

136) A perusal of the above confession of A-25 shows that he was willingly involved in the landing of smuggled arms and ammunitions at Shekhadi and that he also possessed and stored arms and ammunitions at the instructions of Tiger Memon.

137) We are also satisfied that the A-25 has made the above confession voluntarily, without any pressure or coercion and the same has been recorded after following all the safeguards enumerated under Section 15 of TADA and the rules framed thereunder.

Confessional Statements of co-accused

138) Apart from his own confession, the involvement of the appellant (A-25) has also been disclosed in the confessional statements of three other co-accused. The legality and acceptability of the confessions of the co-accused has already been considered by us in the earlier part of our discussion. The said confessions insofar as they refer to the appellant (A-25) are summarized hereinbelow:

Confessional Statement of Dawood @ Dawood Taklya Mohd. Phanse @ Phanasmiyan (A-14)

Confessional statement of A-14 under Section 15 of TADA was recorded on 15.04.1993 (17:55 hrs.) and 17.04.1993 (19:30 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The said confession reveals as under:

(i) His son, Sarfaraj informed him that Shafi had kept the weapons at the appellant’s house.

(ii) The appellant was present at the time of the first landing at Shekhadi.

(iii) The appellant alongwith Iqbal and A-42 patrolled the car in which Tiger and others (including A-14) were travelling when they were on their way to Waghani Tower alongwith the truck which was loaded with arms and ammunitions that had landed at Shekhadi.
(iv) The appellant was present when the arms and ammunitions were unloaded from the truck at Waghani Tower.
(v) At the instance of Tiger and his men, he went to the residence of the appellant to get 3 rifles and 6 magazines which were kept at his house and later on gave the same to Tiger.
(vi) The appellant was present at the time of the second landing at Shekhadi and after completion of the landing operation, A-14 returned home alongwith the appellant and others.
(vii) A-14 paid Rs. 4,000/- to the appellant for the work done during the landing operation.

The above statement of A-14 makes clear the relationship of A-25 with Tiger and his men and his participation in landing and transportation of arms as well as keeping of arms in his house as directed by Tiger and taking of arms from his house.

Confessional Statement of Khalil Ahmed Syed Ali Nazir (A-42)

Confessional statement of A-42 under Section 15 of TADA was recorded on 16.04.1993 (20:30 hrs.) and 19.04.1993 (21:00 hrs.) by Mr. P.D. Pawar (PW-185), the then DCP, Zone V, Bombay. The said confession reveals that on the night of 03.03.1993, the appellant, alongwith others, was sitting in the truck and after reaching Shekhadi, the smuggled material was loaded in the said truck.

Confessional Statement of Sujjad Alam @ Iqbal Abdul Hakim Nazir (A-61)

Confessional statement of A-61 under Section 15 of TADA was recorded on 19.04.1993 (11:40 hrs.) and 21.04.1993 (10:50 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The said confession reveals as under:

(i) The appellant was the man of Tiger and was present at the residence of A-42 in the evening of 20.01.1993. Shafi was also present there and they were unloading some goods from a gunny bag in a jeep. At that time, Sarfaraj (Dawood Taklya's son) was also present. After opening the gunny bags, A-61 saw 16 rifles and 32 magazines in it.
(ii) Thereafter, A-61, A-42 and the appellant took the above rifles and magazines in an auto-rickshaw to the his (A-25) residence.
(iii) The appellant was present at Waghani Tower during the first landing at Shekhadi.
(iv) On 09.02.1993, A-61 alongwith A-14 and A-42 went to the appellant's residence. A-14 told the appellant to hand over 3 rifles and 6 cassettes to him. Accordingly, the appellant handed over the same in a gunny bag which was later on collected by Tiger Memon from Lone Phata.
(v) The appellant also accompanied A-61 and others while going to Shekhadi for the second landing.

139) A perusal of the confessional statements of all the above three accused persons, namely, A-14, A-42 and A-61 establish the fact that it corroborates with the confessional statement of A-25 in material particulars. The involvement of the appellant is established inasmuch as:-

(i) The appellant kept 16 rifles and 32 cassettes at his residence at the instance of Shafi.
(ii) The appellant participated and assisted in both the landings of arms and ammunitions at Shekhadi.
(iii) The appellant was also involved in the transportation of smuggled consignment of weapons from Worli to Waghani Tower.
(iv) On 09.02.1993, A-14 had come to his house to take 3 rifles and 6 magazines at the behest of Tiger Memon.

Deposition of Prosecution Witnesses:

140) Apart from the aforesaid evidence, the involvement and the role of the appellant in the conspiracy, as stated above, is disclosed by the deposition of various prosecution witnesses which are as under:

Deposition of Laxman Karkera (PW-45)

PW-45 revealed as under:

(i) On 26.03.1993, he acted as a panch witness and, on the said day, the appellant led the panchas and the police to his (A-25) house near Urdu school in village Mehandadi .

(ii) While conducting a search in his house, the police found 3 gunny bags that were buried three feet deep in a half constructed bathroom. When the gunny bags were opened by the police, the same were found to be containing 13 AK-56 rifles and 26 empty magazines of AK-56 rifles. The rifles and magazines were examined by the police and the magazines could be fitted into the cavity of the said rifles.

(iii) The Police then took charge of the rifles and magazines and the labels of signatures of PW-45 and others were pasted on each AK-56 rifle and magazine. Then, the same were wrapped in a paper and were labeled and sealed and signatures of PW-45 and others were obtained on the same. The police also took charge of the 3 gunny bags. All the above events were recorded by one police officer in a Panchnama and the same was signed by PI Pawar, PW-45 and the co-panch. The panchanama - Exh. 158 was read over to PW-45 and the co-panch and was found to be correctly drawn.

(iv) He has correctly identified the Panchanama. He has also correctly identified PI Pawar as the one who had signed the said panchanama and PSI Nerlekar as the one who had written the said panchanama.

(v) The rifles, magazines and 3 gunny bags seized by the police, as stated above, were duly identified by him in the court.

Deposition of HB Pawar (PW-596)

PW-596 revealed as under:

(i) As instructed by DCP Shri Rakesh Maria, he went alongwith other police officers and staff to Mhasala on 26.03.1993.

(ii) After receiving information from a person, A-14 was arrested by him in Buddha Wada locality of Mhasala.

(iii) After interrogation, A-14 led PSI Rane, PW-596 and others to Mhendadi village and they arrested the appellant and A-42 from the chowk of the said village.

(iv) Thereafter, he interrogated both the said accused and decided to search their houses. One Shri Laxman Karkera (PW-45) agreed to act as a panch witness.

(v) Thereafter, the panch witnesses and the police party along with the appellant went to his house near an Urdu School of the said village. The said house was shown to them by the appellant himself.

(vi) The search of the said house was taken in the presence of the panch witnesses. 3 gunny bags were found to be concealed about 3 feet deep under the tiles of a bathroom.

(vii) The said 3 gunny bags were opened and were found to be containing 13 AK-56 rifles and 26 empty magazines of AK-56 rifles. Thereafter, each of the AK-56 rifles was wrapped in a brown paper and the said packet was tied by means of a string and labels of signatures of panch witnesses and his signature was affixed on each of the packet and the same were also sealed by using the lac seal and in the same manner the 26 empty magazines and the said 3 gunny bags were also wrapped in a brown paper and labelled and sealed. He recorded the description of the rifles and magazines in a panchanama by dictating the matter to PSI Nerlekar. He also took charge of the rifles, magazines and gunny bags.

(viii) The panchanama was read over to the panch witnesses and their signatures were obtained to ensure its correctness. He also countersigned the same.

141) The above depositions of PW-45 and PW-596, corroborate with the confession of the appellant and those of the 3 co-accused persons mentioned above and unmistakably establish the possession of the contraband material by the appellant within a notified area. Even lengthy cross-examination of the above witnesses has failed to destroy their testimonies.

142) The recovered articles were sent to FSL for opinion by Waman Kulkarni (PW-662) vide Exh. 2440 and a positive FSL Report Exh. 2440-A was received by the Police.

143) Apart from the evidence of Police Inspector, i.e., PW-596, PW-588, PW-

605 and PW-606, the abovesaid confessional statements of A-14, A-42 and A-61 prove the prosecution case with reference to the role of A-25 in handling and transporting arms and ammunitions from Shekhadi port to various places and it is also clear that arms were stored in his house and taken to the place as directed by the Tiger.

144) We have already highlighted the Panchnama containing all the details of arms and ammunitions collected from the residence of A-25. PW-45 explained all those details and he admitted the said Panchnama as well as his signature therein. Though A-25 was represented by a counsel before the trial Court, there was no cross-examination at all.

145) Taking note of all the above materials, the Designated Court, after analyzing the same, came to the conclusion that the material contained in the confession of A-25 clearly reveals his involvement in landing at Shekhadi and its transportation. The corroborative material contained in the confession of A-25 i.e. his involvement in landing at Shekhadi and its transportation, for which he was charged with, has also been proved in the confessions of A-14, A-42 and A-61. Considering the role played by him i.e., he was possessing such a large number of arms and ammunitions after the Shekhadi operation was over and was holding the same for a considerable period, the same also denotes that he was a man of close confidence of prime accused persons. The Designated Court also rightly concluded that the act committed by him was for furthering the object of conspiracy and he himself having committed the same during the 1st half of February, 1993 i.e. much prior to even Tiger Memon fixing the target for committing serial bomb blasts in Bombay and is guilty for the offence of conspiracy to commit terrorist acts punishable under Section 3(3) of TADA.

146) In view of the evidence discussed above, we hold that the appellant was actively involved in the conspiracy to cause blasts in Bombay and in consequence of the said involvement, he has committed the offences for which he has been charged and we affirm the same.

147) As rightly pointed out by the prosecution, the facts and events stated by the appellant in his own confession are duly corroborated by the confessions of other co-accused, thereby clearly revealing his involvement in the landings at Shekhadi and that he was unauthorisedly in possession of the contraband material. Therefore, the appellant is guilty for the offences for which he has been charged from head firstly to fourthly.

Appeal filed by the State of Maharashtra through CBI
Criminal Appeal No. 1028 of 2012

148) Insofar as the appeal filed by the CBI against acquittal of the appellant (A-25) for the charge mentioned at head firstly, viz., conspiracy is concerned, in view of the fact that the appellant (A-25) has already been convicted for the same and sentenced to RI for life, learned senior counsel for the CBI has not pressed the appeal before this Court, hence, we are of the view that there is no need to consider this appeal in view of the reason appended above and therefore, the appeal is liable to be dismissed.

Sentence:

149) Regarding sentence, the prosecution submitted that the appellant was given full opportunity to defend himself on the question of quantum of sentence. His statement was recorded on 17.10.2006 (Exh.2984) in which he prayed that the following factors, amongst others, may be considered while determining his sentence :

i) He is the sole bread winner of his family comprising of his wife and three small children; and

ii) His wife is suffering from a mental ailment.

With respect to the above contentions regarding quantum of sentence, the prosecution submitted that the appellant was in possession and storage of 13 AK-56 rifles and 26 magazines for a considerable period of time.

150) From the materials, it is clear that the appellant neither dissociated himself nor resisted from participating in the landings at Shekhadi or transportation of contraband material to Waghani Tower nor did he inform the same to the police authorities or took any steps for the same. This is sufficient to show that he was responsible for the blasts in Bombay and he was very well aware of its consequences.

151) In view of the above, we are of the view that the sentence awarded by the Designated Court to the appellant is justified and the same is confirmed. Consequently, the appeal is dismissed.

Criminal Appeal No. 1441 of 2007

Vijay Krishnaji Patil (A-116) .... Appellant(s)

vs.

The State of Maharashtra,
through Superintendent of Police,
CBI (STF), Mumbai .... Respondent(s)

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152) Mr. Chander Uday Singh, learned senior counsel appeared for the appellant (A-116) and Mr. Mukul Gupta, learned senior counsel duly assisted by Mr. Satyakam, learned counsel for the respondent-CBI.
153) The present appeal is directed against the final judgment and order of conviction and sentence dated 26.09.2006 and 22.05.2007 respectively whereby the appellant (A-116) has been convicted and sentenced to rigorous imprisonment (RI) for life by the Designated Court under TADA for the Bombay Bomb Blast Case, Greater Bombay in B.B.C. No.1/1993.

Charges:
154) A common charge of conspiracy was framed against all the co-conspirators including the appellant (A-116). The relevant portion of the said charge is reproduced hereunder:

> "During the period from December, 1992 to April, 1993 at various places in Bombay, District Raigad and District Thane in India and outside India in Dubai (U.A.E.) and Pakistan, entered into a criminal conspiracy and/or were members of the said criminal conspiracy whose object was to commit terrorist acts in India and that you all agreed to commit following illegal acts, namely, to commit terrorist acts with an intent to overawe the Government as by law established, to strike terror in the people, to alienate sections of the people and to adversely affect the harmony amongst different sections of the people, i.e. Hindus and Muslims by using bombs, dynamites, hand grenades and other explosive substances like RDX or inflammable substances or fire-arms like AK-56 rifles, carbines, pistols and other lethal weapons, in such a manner as to cause or as likely to cause death of or injuries to any person or persons, loss of or damage to and disruption of supplies of services essential to the life of the community, and to achieve the objectives of the conspiracy, you all agreed to smuggle fire-arms, ammunitions, detonators, hand grenades and high explosives like RDX into India and to distribute the same amongst yourselves and your men of confidence for the purpose of committing terrorist acts and for the said purpose to conceal and store all these arms, ammunitions and explosives at such safe places and amongst yourselves and with your men of confidence till its use for committing terrorist acts and achieving the objects of criminal conspiracy and to dispose off the same as need arises. To organize training camps in Pakistan and in India to import and undergo weapons training in handling of arms, ammunitions and explosives to commit terrorist acts. To harbour and conceal terrorists/co-conspirators, and also to aid, abet and knowingly facilitate the terrorist acts and/or any act preparatory to the commission of terrorist acts and to render any assistance financial or otherwise for accomplishing the object of the conspiracy to commit terrorist acts, to do and commit any other illegal acts as were necessary for achieving the aforesaid objectives of the criminal conspiracy and that on 12.03.1993 were successful in causing bomb explosions at Stock Exchange Building, Air India Building, Hotel Sea Rock at Bandra, Hotel Centaur at Juhu, Hotel Centaur at Santacruz, Zaveri Bazaar, Katha Bazaar, Century Bazaar at Worli, Petrol Pump adjoining Shiv Sena Bhavan, Plaza Theatre and in lobbing handgrenades at Macchimar Hindu Colony, Mahim and at Bay-52, Sahar International

Airport which left more than 257 persons dead, 713 injured and property worth about Rs.27 crores destroyed, and attempted to cause bomb explosions at Naigaum Cross Road and Dhanji Street, all in the city of Bombay and its suburbs i.e. within Greater Bombay. And thereby committed offences punishable under Section 3(3) of TADA (P) Act, 1987 and Section 120-B of IPC read with Sections 3(2)(i)(ii), 3(3)(4), 5 and 6 of TADA (P) Act, 1987 and read with Sections 302, 307, 326, 324, 427, 435, 436, 201 and 212 of Indian Penal Code and offences under Sections 3 and 7 read with Sections 25 (1A), (1B)(a) of the Arms Act, 1959, Sections 9B (1)(a)(b)(c) of the Explosives Act, 1884, Sections 3, 4(a)(b), 5 and 6 of the Explosive Substances Act, 1908 and Section 4 of the Prevention of Damage to Public Property Act, 1984 and within my cognizance."

In addition to the above-said principal charge of conspiracy, the appellant was also charged on other count which reads as under:

At head Secondly; The appellant, in pursuance of the aforesaid criminal conspiracy, intentionally aided and abetted co-accused persons by allowing them to smuggle into India and transport arms and ammunitions, which were brought into the country for the purpose of committing terrorist acts which were intercepted by a team of Police Officers on the night of 09/01/1993 at Gondghar Phata and allowed to pass the said contraband items in lieu of a bribe of Rs. 7,00,000/- and thereby facilitated the commission of terrorist acts, punishable under section 3(3) of TADA Act, 1987."

155) The charges mentioned above were proved against the appellant (A-116). The appellant has been convicted and sentenced for the above-said charges as under:

Conviction and Sentence:

i) The appellant has been convicted for the offence of conspiracy read with the offences described at head firstly and sentenced to RI for life along with a fine of Rs. 1,00,000/-, in default, to further undergo RI for 3 years. (charge firstly)

ii) The appellant has also been convicted under Section 3(3) of TADA for commission of offences at head secondly and sentenced to RI for life along with a fine of Rs. 1,00,000/-, in default, to further undergo RI for 3 years. (charge secondly)

Evidence

156) At the time of commission of offence, the appellant (A-116) was posted as P.S.I. (Police Sub-Inspector), Police Station, Shrivardhan. The evidence against the appellant (A-116) is in the form of:-

(i) confessions made by other co-conspirators; (co-accused);

(ii) testimony of prosecution witnesses; and

(iii) documentary evidence.

Confessional Statements of co-accused:

157) The involvement of the appellant has been disclosed in the confessional statements of the following co-accused. The legality and acceptability of the confessions of the co-accused has already been considered by us in the earlier part of our discussion. The said confessions insofar as they refer to the appellant (A-116) are summarized hereinbelow:

Confessional Statement of Mohd. Kasam Lajpuria @ Mohd. Kalia @ Mechanic Chacha (A-136)

Confessional statement of A-136 under Section 15 of TADA has been recorded on 09.11.1999 (15:40 hrs.) and 10.11.1999 (09:00 hrs.) by Shri O.P. Chhatwal (PW-684), the then SP, CBI-STF, New Delhi. A brief summary of the confession of A-136 with reference to the appellant is as under:-

(i) The landing agents used to talk to officers of Customs and Police Department. The money used to be sent to the officers of the Customs and Police Department through landing agents.

(ii) At Dighi Jetty, about 265 silver ingots each weighing 35-40 kgs, 15-20 wooden boxes and 15-20 tin boxes referred to as 'Samaan' were unloaded from the ship. He further described that the word 'Samaan' is equivalent to the word 'arms' in the language of criminals.

(iii) A-136 was travelling in a car which was followed by a truck and the

tempo containing arms and silver ingots. After noticing that the said two vehicles were not following, their car came back and saw that the said two vehicles had been intercepted by a police party.

(iv) An officer by name 'Patil' (the appellant) stopped the said two vehicles and told Salim (A-134) that you people go after landing and did not pay anything. At that time, Uttam Shantaram Poddar (A-30) along with one Customs officer came and it was settled that Rs. 8 lakhs will be paid to the police for the said landing. Since the accused persons were not carrying such a huge amount with them, the appellant kept 5 silver bars as security on the premise that it will be returned as and when payment will be made. Accordingly, the truck bearing No. 1051 and the tempo containing silver bags and arms respectively, were allowed to pass through.

Confessional Statement of Mohammed Salim Mira Moiddin Shaikh @ Salim Kutta (A-134)

Confessional statement of A-134 under Section 15 of TADA has been recorded on 18.08.1995 (16:00 hrs.) and 19.08.1995 (16:00 hrs.) by Shri Satyakant Rohinikant Saikia (PW-481), the then DIG-CID Crime and Railways, Gujarat State, Ahmedabad. A brief summary of the confession of A-134 with reference to the appellant is as under :-

(i) A-134 stated that silver bags, 25/30 wooden boxes and 15/20 green coloured canvas bags were unloaded and reloaded into two trucks. There were about 250/300 silver ingots.

(ii) He futher stated that on their return from Dighi Jetty after loading, their truck was stopped by a police official (sub- Inspector). The Police officer was annoyed because he had not received any money for the said landing. Later, Customs Officer, Jaywant Keshav Gurav (A-82) reached there in a Jeep driven by A-30 and all of them spoke to the said police officer who agreed to release the trucks after accepting 6/7 silver bars as security in lieu of the bribe of Rs. 10 lacs (approx.) After few days, Feroz paid cash to the officer and got back the silver bars.

(iii) Afsal Gadbad and Arif Lamboo told A-134 that some of the arms and ammunitions which had landed at Dighi Jetty were delivered by them to a man of Tiger Memon.

Confessional Statement of Uttam Shantaram Poddar (A-30)

Confessional statement of A-30 under Section 15 of TADA has been recorded on 12.07.1993 (17:20 hrs.) and 15.07.1993 by Meera Borwankar (PW-187), the then Superintendent of Police, Crime Investigation Department (Crimes) Pune. A-30 stated as under:-

(i) He stated that he gave Rs. 25,000/- to Mali Hawaldar (A-101) for Vijay Patil (A-116), sub-Inspector of Shrivardhan in December, 1992 in lieu of another landing of silver.

(ii) On 9th in the night, A-30 came to Dighi, thereafter, he was sent on the road to check, where he met Inspector Gurav (A-82) and sat in his Jeep. At Gondghar Phata they saw that Vijay Patil, SI, Shrivardhan had stopped two trucks. A-136 made an offer of Rs. 10 lacs to the police.

(iii) Due to non-availability of ready cash, A-136 gave some silver bars in lieu of cash to the police and left with the trucks.

(iv) A-30 sent a message to A-116 that he would deliver the money at his residence. The accused also stated that Feroz gave Rs. 2 lacs to the Inspector at Shrivardhan.

Confessional Statement of Jaywant Keshav Gurav (A-82)

Confessional statement of A-82 under Section 15 of TADA has been recorded on 04.05.1993 and 06.05.1993 (10:00 hrs.) by Shri Tikaram Shrawan Bhal (PW-191), the then Superintendent of Police, Alibaug, Raigad. A-82, in his confessional statement, referred to the role of the appellant as under:-

(i) He confessed that in December, 1992, customs officials received a letter indicating that weapons would be smuggled into India from the foreign country and landing thereof would be made at Western Coast and for that purpose, orders were issued to carry out patrolling and to remain alert.

(ii) A-30 met him on 09.01.1993 and said that silver landing was to take place that night from Dighi Jetty.
(iii) A-82 met A-30 again at 12:00 a.m. and went towards Gondghar Phata. Around 12:30 a.m., he noticed that the trucks had been stopped by a police party led by Inspector Patil (A-116).
(iv) He saw that A-116 and 5-7 policemen of Shrivardhan Police Station were standing near the Police jeep.
(v) A-30 went to Police Sub-Inspector Patil. At that place, Shabbir and 4-5 persons of Mohammed Dosa were also standing.
(vi) A-116 went to A-82 and asked as to what was to be done. A-82 told him, "you settle among yourselves". The police, after half an hour following settlement, released the detained trucks.

Confessional Statement of Sharif Abdul Gafoor Parkar @ Dadabhai (A-17)

Confessional statement of A-17 under Section 15 of TADA has been recorded on 18.04.1993 and 20.04.1993 by Shri Prem Krishna Jain (PW-189), the then DCP, Zone X, Bombay. In his confession, he stated that Rs. 25,000/- was paid to Shrivardhan Police Station for landing on two occasions.

158) Learned senior counsel for the appellant, by pointing out the above confessional statements, particularly, the confession of A-30, submitted that the prosecution has not shown or produced any material on record that the police officer was aware of the arms and ammunitions that had landed at Dighi Jetty and that the same were transported along with silver boxes. We have carefully analysed the confessional statements including that of A-30 and we find no force in the submission made by learned senior counsel for the appellant. On the other hand, we are unable to accept the said submission.

159) A perusal of the confessional statements of all the above accused, namely, A-17, A-30, A-82, A-134 and A-136 clearly establish the fact that it corroborates with each other. After consideration of all the abovesaid confessional statements of the co-accused, the involvement of the appellant in the conspiracy is established inasmuch as:-

(i) The arms and ammunitions had landed at Dighi Jetty in the second week of January, 1993.
(ii) The landing agents used to talk to the officers of Customs/Police Department.
(iii) The appellant knowingly let off a truck and a tempo carrying smuggled goods pursuant to negotiations on acceptance of bribe of Rs. 8/10 lakhs.
(iv) As the accused persons were not carrying such a huge amount, the appellant kept 5/8 silver bars as a token for security.
(v) The special negotiation and special amount agreed upon shows that the appellant demanded unusual amount in view of the nature of goods smuggled. In other words, he was aware that the consignment was containing arms and ammunitions.
(vi) The appellant, after consultation with A-82, Custom official (who had knowledge that goods could be weapons after the Departmental alert of December, 1992) allowed the trucks loaded with smuggled goods to proceed.
(vii) The confession of A-134 establishes the link between the landing and Mohammed Mustafa Dosa and Dawood Ibrahim and also the landed arms and ammunitions with Tiger Memon.

Deposition of Prosecution Witnesses:

160) Apart from the aforesaid evidence, the involvement and the role of the appellant in the conspiracy, as stated above, is disclosed by the depositions of various prosecution witnesses which are as under:

Deposition of Dilip Bhiku Pansare (PW-97)

PW-97 was working as a Mechanic in State Transport Corporation. In his deposition dated 12.09.1996, he stated as under:-

(i) He drove one of the two trucks bearing no. 5533 in which silver bars as told to him by Shabbir Kadri were loaded on 09.01.1993 at Dighi Jetty.
(ii) He stated that at Gondghar Phata, he was stopped by a police jeep.
(iii) He stated that the police men boarded the said truck and started shouting that there was silver in the truck.

(iv) He stated that meanwhile another truck also came following his truck and when the police men were trying to board the truck, the persons who were travelling in the said truck said 'Saab Andar Math Jao, Andar Kaanch ka Saman Hai'
(v) He stated that thereafter, Shabbir Kadri came and started asking A-116 'what had happened'.
(vi) He stated that he took the appellant nearby a white car which was stationed behind the said truck.
(vii) He stated that meanwhile A-30 and A-82 also came there and discussion took place for about half an hour.
(viii) He stated that, thereafter, 5 silver bars were taken out of the truck bearing No. 5533 and were kept in the police jeep.
(ix) He stated that when he left the said spot, the other truck alongwith the police jeep was still there.
(x) He stated that the person who shouted to take out the keys of my truck was at the rear side portion of the truck.
(xi) He stated that police checked his truck for 15 minutes and took ten minutes for checking the other truck.

Deposition of Eknath Raghav Pedhvi (PW-156)

At the relevant time, PW-156 was working as a Chowkidar and Safaidar (Cleaner) at the Dighi Port. In his deposition dated 15.01.1997, he stated as under:-

(i) He stated that on 09.01.1993, one Shri Mane from the Dighi Police Station came to his house and told him to give the keys of the Jetty to the person who would approach him.
(ii) On the same night, he was approached by Shabbir who inquired about the jetty and also asked as to who had the keys of the gate to the jetty.
(iii) He gave the keys to Shabbir (AA) and told him that there was no need to worry as he had told everything to the Police.
(iv) Shabbir came back at 5:30 am and returned the key of the jetty to him.
(v) After 3-4 days, the policeman named Mane went to his room and took him to the residence of A-116.
(vi) At the house of A-116, he received Rs. 2,000/- which was handed over to him by Mane for giving keys of Jetty to Shabbir.
(vii) He stated that the said amount was taken out by Mane underneath the bed-sheet.

Deposition of Shankar Rao Anna Patil (PW-574)

PW-574 was in the Maharashtra Police Force since 1964. In his deposition dated 02.02.2000, he stated that on 22.04.1993, he went to the residence of A-116 and recovered Rs. 2,50,000/- from his house and a panchnama dated 22.04.1993 marked as Exhibit 689 was drawn by him in the presence of panch witnesses.

Deposition of Vinod Babu Chavan (PW-590)

The deposition of PW-590 was recorded on 22.02.2000. He stated that on 12.04.1993, he took charge of the weekly diary of the appellant. The said diary is marked as Art. 326. A panchnama dated 12.04.1993, marked as Exhibit 571, was also effected.

Deposition of Ravindra Kaka Patil (PW-94)

At the relevant time, PW-94 was a Junior Engineer in Kharland Office of the Irrigation Department in village Srivardhan. In his deposition dated 10.09.1996, he stated as under:

(i) He stated that he knew A-116 as the police officer who used to requisite their office Jeep for the work of bandobast. The driver of PW-94 became conversant with A-116 and as a result the witness also became conversant with A-116.
(ii) He stated that in March, 1993, the appellant came to his house and told him that while he (PW 94) was away in January 1993, the appellant had kept five silver bricks in his room.
(iii) On being asked as to why the appellant had kept the same, A-116 replied that he placed the same as nobody could have seen it as he was not at his house.
(iv) He stated that the appellant had telephoned him and asked him in first or second week of January, 1993 that there was a function of offering 'oaty' at his residence and people who had arrived from Mahad for the said function were waiting outside the sweetmeat shop and that he should take the 'burfi' which was with the said persons to his

house.

(v) He stated that he reached on motorcycle to the Naka and two or three persons were standing and one of them took two packets wrapped in a newspaper and kept the same in the dickey of his motorcycle. Later, the appellant came following him from behind.

(vi) He stated that on the way, the appellant asked him to handover the 'burfi' (sweets) to him since he was also going home. The appellant thereafter took both the packets.

161) From the perusal of the above, it is clear that:-

(i) The appellant was well known to the accused persons who referred to him in casual manner.

(ii) The police party, after checking both the trucks for a considerable period of time had negotiations with the smugglers.

(iii) Pursuant to the negotiations, the appellant demanded a sum of Rs. 8/10 lakhs from the smugglers and kept 4-5 silver bars as a token for security.

(iv) The keys of the jetty were given to Shabbir (AA) at the instance of the police.

(v) The appellant paid Rs. 2,000/- to PW-156 which was handed over to him by Mane (A-101) for giving keys of the Jetty to Shabbir.

It is relevant to mention that the said witness was not even cross-examined on behalf of the appellant (A-116).

Other witnesses:

Deposition of Yeshwant Govind Kadam (PW-109)

162) PW-109 is a panch witness and deposed that Panchnama dated 21.04.1993 marked as Exhibit 563 was drawn in his presence. The said Panchnama records that Ramesh Dattatray Mali (A-101), Police Constable was given Rs. 15,000/- by A-116 in connection with smuggling matter and this money was produced by Mali (A-101) in presence of two panchas.

163) The said witness also deposed about the Panchnama dated 22.04.1993 marked as Exhibit 564. The panchnama records that out of the monies taken by A-116 in smuggling, he handed over Rs. 25,000/- to P.C. Krishna Tukaram Pingle, B. No. 1499 and that P.C. Pingle was producing the money taken in the Police Station.

164) He further deposed and proved the Panchnama dated 25.04.1993 marked as Exh. 565 which records that Inspector Ashok Narayan Muneshwar (A-70) was given Rs. 30,000 in connection with smuggling of goods at Dighi and that he produced the said money in front of panchas.

165) By pointing out the above evidence, learned senior counsel for the appellant, argued that at the most it denotes that at the time of interception, the police found only silver bricks in one truck and similar bricks and some boxes in the other truck. Even after counting, they found 100 silver bricks and some boxes. He further submitted that when the police enquired about the contents of the boxes, Chacha (A-136) replied that the boxes contained 'watches'. In other words, according to him, the evidence and the entire materials relied on by the prosecution denote that the police had knowledge of only silver bricks and watches, i.e., the contents of the boxes. Finally, he submitted that the knowledge in furtherance of the act of abetment as contemplated under Section 3(3) of TADA seems to be absent and cannot be inferred on the basis of surmises merely because the appellant was the PSI. In the light of the vehement arguments, we have carefully analysed the prosecution witnesses and the materials placed. Here again, we are unable to concur with the arguments. On the other hand, we are unable to accept the same.

166) On perusal of the entire evidence as placed by the prosecution, the following facts emerge:-

(i) The appellant (A-116) arranged for the keys to be given to Shabbir (AA) for the purposes of landing.

(ii) A police party led by the appellant intercepted two trucks at Gondghar Phata and after checking for a considerable period of time and after negotiating for half an hour, let them off;

(iii) The appellant was well acquainted with the smugglers;

(iv) The appellant had secret negotiations with the smugglers as well as consultation with the Custom official Gurav (A-82) for fixing the special bribe amount;

(v) The appellant took silver bars as security in lieu of cash and kept the same in the house of PW-94 who duly corroborates with the fact that he kept the bars in his house;
(vi) The appellant paid Rs. 2,000/- to PW-156 for handing over the keys of the Dighi Jetty to Shabbir Kadri (AA) on 09.01.1993 the day when arms and ammunitions landed at Dighi.

It may be pointed out here that sufficient evidence has been placed on record by the prosecution to show that part of the consignment which landed at Dighi was also delivered to Tiger Memon.

Sentence

167) Coming to sentence, it is not in dispute that the appellant (A-116) was the head of the police party. The evidence clearly reveals that the appellant was primarily responsible for the decision arrived at in allowing the said contraband smuggled material to be transported further without the same being intercepted/checked by the police in lieu of the bribe amount to be received.

168) Further, the appellant was given full opportunity to defend himself on the question of quantum of sentence. The appellant filed statement dated 24.01.2007 on the quantum of sentence which is Exh. 2954. The appellant prayed that the following, amongst other factors, may be considered while determining his sentence:-

(i) He was the sole bread winner of his family; and
(ii) He was in the government service.

169) The Designated Court, after considering the factors pleaded by the appellant and the nature of crime committed by him, held as under:-

> "499.....considering the facts that A-116 was head of local police and as such was duty bound to make every attempt to prevent commission of a crime, but instead of carrying his duty, he had allowed commission of crime and so also further crimes by allowing transportation of contraband material and having acted in such a manner for receiving a bribe amount makes it extremely difficult to accept submission for leniency...."

170) As rightly pointed out by learned senior counsel for the CBI, the crime of the appellant may be considered in the light of the fact that he was the protector of law and he has breached the trust of the people of the country. Had he honestly done his duty, perhaps the whole disaster could have been obviated.

171) In the light of the above, we are of the view that the sentence awarded by the Designated Court to the appellant is justified. The above said evidence substantiates and establishes the charge of conspiracy framed against the appellant (A-116). We fully agree with the reasoning and ultimate conclusion of the Designated Court both on the conviction and sentence. Consequently, the appeal is liable to be dismissed.

Criminal Appeal No. 401 of 2008

Mohd. Salim Mira Moiddin Shaikh
@ Salim Kutta (A-134) ... Appellant(s)

vs.

The State of Maharashtra,
through CBI-STF, Mumbai ... Respondent(s)

172) Mr. Chander Uday Singh, learned senior counsel appeared for the appellant (A-134) and Mr. Mukul Gupta, learned senior counsel duly assisted by Mr. Satyakam, learned counsel for the respondent (CBI).

173) The instant appeal is directed against the final judgment and order of conviction and sentence dated 19.10.2006 and 05.06.2007 respectively whereby the appellant (A-134) has been convicted and sentenced to rigorous imprisonment (RI) for life by the Designated Court under TADA for the Bombay Bomb Blast Case, Greater Bombay in B.B.C. No.1/1993.

Charges:

174) A common charge of conspiracy was framed against all the co-conspirators including the appellant herein. The relevant portion of the said charge is reproduced hereunder:

> "During the period from December, 1992 to April, 1993 at various places in Bombay, District Raigad and District Thane in India and outside India in Dubai (U.A.E.) and Pakistan, entered into a criminal conspiracy and/or were members of the said criminal conspiracy whose object was to commit terrorist acts in India and that you all agreed to commit following illegal acts, namely, to commit terrorist acts with an intent to overawe the Government as by law established, to strike terror in the people, to alienate sections of the people and to adversely affect the harmony amongst different sections of the people, i.e. Hindus and Muslims by using bombs, dynamites, hand grenades and other explosive substances like RDX or inflammable substances or fire-arms like AK-56 rifles, carbines, pistols and other lethal weapons, in such a manner as to cause or as likely to cause death of or injuries to any person or persons, loss of or damage to and disruption of supplies of services essential to the life of the community, and to achieve the objectives of the conspiracy, you all agreed to smuggle fire-arms, ammunitions, detonators, hand grenades and high explosives like RDX into India and to distribute the same amongst yourselves and your men of confidence for the purpose of committing terrorist acts and for the said purpose to conceal and store all these arms, ammunitions and explosives at such safe places and amongst yourselves and with your men of confidence till its use for committing terrorist acts and achieving the objects of criminal conspiracy and to dispose off the same as need arises. To organize training camps in Pakistan and in India to import and undergo weapons training in handling of arms, ammunitions and explosives to commit terrorist acts. To harbour and conceal terrorists/co-conspirators, and also to aid, abet and knowingly facilitate the terrorist acts and/or any act preparatory to the commission of terrorist acts and to render any assistance financial or otherwise for accomplishing the object of the conspiracy to commit terrorist acts, to do and commit any other illegal acts as were necessary for achieving the aforesaid objectives of the criminal conspiracy and that on 12.03.1993 were successful in causing bomb explosions at Stock Exchange Building, Air India Building, Hotel Sea Rock at Bandra, Hotel Centaur at Juhu, Hotel Centaur at Santacruz, Zaveri Bazaar, Katha Bazaar, Century Bazaar at Worli, Petrol Pump adjoining Shiv Sena Bhavan, Plaza Theatre and in lobbing handgrenades at Macchimar Hindu Colony, Mahim and at Bay-52, Sahar International Airport which left more than 257 persons dead, 713 injured and property worth about Rs.27 crores destroyed, and attempted to cause bomb explosions at Naigaum Cross Road and Dhanji Street, all in the city of Bombay and its suburbs i.e. within Greater Bombay. And thereby committed offences punishable under Section 3(3) of TADA (P) Act, 1987 and Section 120-B of IPC read with Sections 3(2)(i)(ii), 3(3)(4), 5 and 6 of TADA (P) Act, 1987 and read with Sections 302, 307, 326, 324, 427, 435, 436, 201 and 212 of Indian Penal Code and offences under Sections 3 and 7 read with Sections 25 (1A), (1B)(a) of the Arms Act, 1959, Sections 9B (1)(a)(b)(c) of the Explosives Act, 1884, Sections 3, 4(a)(b), 5 and 6 of the Explosive Substances Act, 1908 and Section 4 of the Prevention of Damage to Public Property Act, 1984 and within my cognizance."

In addition to the above-said principal charge of conspiracy, the appellant was also charged on the following counts:

> At head Secondly: The appellant, in pursuance of the aforesaid criminal conspiracy and during the period January, 1993 to March, 1993, abetted and knowingly and intentionally facilitated commission of terrorists' acts and acts preparatory to terrorists' act by committing the following acts:
>
> (a) He attended meeting at Hotel Persian Darbar, Panvel on 06.01.1993 along with co-accused R.K. Singh (A-102), M.S. Sayyed (A-90), Mohd. Dossa (AA) and Mohd. Kasam Lajpuria @ Mechanic Chacha (A-136) and Y.B. Lotle (PW-154) and agreed to carry on

smuggling activities by making payment of illegal gratification for landing of arms, ammunitions at Dighi;

(b) He participated along with landing agent Uttam Poddar (A-30) and other co-accused in landing of arms, ammunitions and handgrenades at Dighi on 09.01.1993 and participated in the transportation of the said arms, ammunitions and handgrenades to the residence of Shabir Kadri (AA) at Agarwada for its concealment;

(c) He participated in the transportation of the said contraband from Dighi when it was intercepted at Gondghar Phata by PSI V.K. Patil (A-116) and due to mediation by Uttam Potdar (A-30), J.K. Gurav (A-82) (Custom Inspector) the said trucks containing contraband were allowed to proceed for some consideration against illegal gratification;

At head Thirdly: The appellant, with an intent to aid the terrorists, contravened the provisions of the Arms Act, 1959, the Arms Rules, 1962, the Explosives Act, 1884 and the Explosive Substances Act, 1908 and participated in the landing of arms and ammunitions, their transportation and thereby committed an offence punishable under Section 6 of TADA.

175) The charges mentioned above were proved against the appellant (A-134). The Designated Court found the appellant guilty on all the aforesaid charges after considering the evidence brought on record by the prosecution which are enumerated herein below:

Conviction and Sentence:

(i) The appellant has been convicted for the offence of conspiracy under Section 3(3) of TADA and Section 120-B of IPC read with the offences described at head firstly and sentenced to RI for life along with a fine of Rs. 50,000/-, in default, to further undergo RI for 1 year. (charge firstly)

ii) The appellant has also been convicted under Section 3(3) of TADA and has been sentenced to RI for 14 years along with a fine of Rs. 50,000/-, in default, to further undergo RI for 1 year. (charge secondly)

(iii) The appellant has also been convicted under Section 6 of TADA and has been sentenced to RI for 14 years along with a fine of Rs. 1,00,000/-, in default, to further undergo RI for 3 years. (charge thirdly)

3.

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5.

Evidence

176) The evidence against the appellant (A-134) is in the form of:-

(i) his own confession;

(ii) confessions made by other co-conspirators; (co-accused);

(iii) testimony of prosecution witnesses; and

(iv) documentary evidence.

Confesssional Statement of Mohd. Salim Mira Moiddin Shaikh @ Salim Kutta (A-134)

177) The involvement of A-134 in the conspiracy is evident from his own confession under Section 15 of TADA recorded on 18.08.1995 and 19.08.1995 (16:00 hrs.) by Shri S.K. Saikia (PW-481), the then DIG, CID, Crime & Railways, Gujarat. We have gone through his entire confession. His confession reveals as under:-

(i) The appellant was born on 07.09.1966 and was 29 years old on the date of recording of his confession.

(ii) At the relevant time, he was a resident of Room No. 9/10, FF, B.M.C. Chawl, Sabu Siddiq Road, Crawford Market, Bombay-1.

(iii) The appellant was previously involved in a number of criminal cases registered at Pydhonie, Byculla, Paltan Rd., and Colaba police

stations pertaining to rioting, assault and robberies.

(iv) He had beaten up some associates of Dawood Ibrahim in Crawford Market.

(v) The appellant knew several other members of the Mohd. Dossa Gang and Arjun Gang.

(vi) The appellant joined Mohd. Dossa gang after a meeting with Mustafa Majnu (A-138), younger brother of Mohd. Dossa (AA). The appellant became Mohd. Dossa's body guard.

(vii) The appellant was involved in the delivery of gold to various persons in Bombay including Raju Kodi (A-26).

(viii) Tiger Memon used to work with Mohd. Dossa and separated in 1989. In 1992, the appellant became a partner of 5% share in smuggling activities along with Mechanic Chacha (A-136) and Feroz Abdul Rafiq.

(ix) In the year 1992, the appellant participated in about 8 landings of silver in Ratnagiri (at Mhasla and Dighi) and more landings near Mangalore.

(x) In 1992, the appellant took part in the murder of Mussa, a smuggler in Bangalore.

(xi) In the first week of January, 1993, the appellant accompanied Mohd. Dossa for a meeting with Customs officers, including Mr. Singh (A-102), Mr. Sayed (A-90) and one more officer at Hotel Persian Darbar, Panvel. In the meeting which went on for 3/4 hours, Mohd. Dossa discussed about landing operations and it was agreed that Customs officers will be paid Rs.7-8 lacs per landing.

(xii) Few days after the above meeting, A-138 called Mohd. Dossa from Dubai and asked him to make arrangements for landing. Mohd. Dossa then told the appellant that large quantity of arms and ammunitions had left Dubai for landing and asked him to go to Dighi at Mhasla and inform the Customs officers.

(xiii) The appellant, thereafter, informed the Customs officials, viz., Mr. Singh (A-102) and Mr. Sayed (A-90) who gave permission for the said landing. The appellant was present when the landing took place at Dighi Jetty. Mechanic Chacha (A-136) and Uttam Poddar (A-30) were also present there.

(xiv) About 250-300 silver ingots, 25-30 wooden boxes and 15-20 canvas bags were landed at Dighi. These items were loaded in trucks which were subsequently intercepted by the Police. The appellant tried to convince the police officer who was annoyed because he had not received money for the landing. Thereafter, Uttam Poddar (A-30) and Customs officer Gurav (A-82) negotiated with the police, which let the trucks pass for a bribe of Rs. 10 lacs. The Police officers kept 6/7 silver ingots in lieu of cash of Rs. 10 lakhs.

(xv) The appellant noticed that one wooden box was containing 4 AK-56 rifles and 12 empty magazines and also that some other boxes were containing hand grenades and their pins. The military coloured canvas bags were found to be containing four tin boxes in each bag which were filled with ammunition for AK-56 rifles.

(xvi) The aforesaid bags were fitted in the cavities made in the truck and the leftover goods were shifted to the house of Shabbir Kadri (AA) where the appellant and others also stayed after landing.

(xvii) During the stay at Shabbir's house, Arif Lamboo and Afzal Gadbad collected the silver ingots and few wooden boxes and canvas bags and delivered them to Ahmed Okliya of Surat, Gujarat on the instructions of Mustafa Majnu (A-138). The appellant was also told by Afsal Gadbad that some arms and ammunitions were delivered by him at Panvel to a man of Tiger Memon. 3-4 wooden boxes and a few canvas bags still remained at Shabbir's house.

(xviii) On the day of landing which took place in the beginning of second week of January, 1993, Mohd. Dossa was present at his office in Bombay.

(xix) The appellant along with several other co-accused persons left for Dubai in the beginning of February, 1993 where they stayed for 15 days. In Dubai, the appellant met Dawood Ibrahim where he told him to be ready for revenge and riots and that for this purpose they would be given training in use of weapons at Pakistan.

(xx) 2-3 days after the meeting with Dawood Ibrahim, Abu Bakar (AA) and others left for Pakistan for receiving training. The appellant had gone to see them off at Dubai Airport. These persons were told that

someone would come at the Airport in Pakistan to receive them.

(xxi) On return, those co-accused persons told the appellant that they had received weapons training at Pakistan and that they were met by Pakistani officers at the Airport who took them out without any immigration formalities.

(xxii) The appellant was in Bombay on the day of the blasts but he denied the participation in the blasts. He, however, fled to Bombay and stayed in Delhi, Uttar Pradesh and a 'neighbouring country' and continued to work for Mohd. Dossa in smuggling of gold.

(xxiii) In July, 1993, the appellant on the instructions of Mohd. Dossa, removed AK-56 rifles, hand grenades, small bombs and 2,000 cartridges lying with Ahmed Okliya of Surat, Gujarat. These arms were the same which had landed at Dighi Jetty.

(xxiv) The appellant kept 1 AK-56 rifle, 2 magazines and 88 cartridges with himself which were recovered by the police at the time of his arrest.

178) Upon perusal of the above confession of the appellant, the following facts emerge -

(i) The appellant played an active role in the entire conspiracy viz., his meeting with Dawood Ibrahim in Dubai;

(ii) He participated in the landing at Dighi and subsequent transportation of arms and ammunitions;

(iii) He participated in the meeting and negotiations with Customs and Police officers in January, 1993 to seek permission and to fix the bribe amount for each landing.

(iv) He was a key aide of Mohd. Dossa, who was one of the main co-conspirators of the Bombay Bomb Blast case.

179) Though counsel for the appellant argued that his confession cannot be relied upon due to the fact that it was not voluntary, on going through the same and the procedure followed by the recording officer, we are satisfied that the appellant has made the above confession voluntarily, without any pressure or coercion and the same has been recorded after following all the safeguards enumerated under Section 15 of TADA and the rules framed thereunder. The said facts have been duly established by the testimony of the recording officer PW-481.

Confessional Statements of co-accused:

180) The prosecution pointed out that the involvement of the appellant in committing overt acts, as stated above, is further strengthened in the confessional statements of the other co-accused persons which are summarized as under:

Confessional Statement of Jamir Sayyed Ismail Kadri (A-133)

Confessional statement of A-133 under Section 15 of TADA has been recorded on 06.08.1995 (12:20 hrs.) and 07.08.1995 (13:15 hrs.) by Shri H.C. Singh, the then Supdt. of Police, CBI/SPE/STF, New Delhi. A brief summary of the confession of A-133 with respect to the appellant is summarized herein under:

(i) In the night of 08/09.01.1993, the appellant and one other friend of Shabbir, brother of A-133, came on a silver coloured motorcycle to their house and slept there.

(ii) On the morning of 09.01.1993, Shabbir told A-133 that silver and weapons would arrive at Dighi Jetty that day.

(iii) The appellant along with Feroz (AA) and Uttam Potdar (A-30) was talking about unloading of material. Hearing their talks, A-133 gauged that goods had been sent by Mohd. Dossa.

(iv) On 09.01.1993, in the evening, around 7 pm, the appellant and others left for Dighi Jetty.

(v) The appellant, along with Feroz and Shabbir, brought 3 wooden boxes to the house of Jamir's grandmother in the morning of 10.01.1993.

(vi) The appellant along with Feroz, Shabbir and A-133 brought 19 silver ingots and 15-20 green coloured bags containing tin boxes and kept them in the house of Jamir's grandmother.

We are satisfied that the confession of A-133 fully corroborates in material aspect with the confession of the appellant.

Confessional Statement of Uttam Shantaram Poddar (A-30)

Confessional statement of A-30 under Section 15 of TADA has been

recorded on 12.07.1993 (17:20 hrs.) and 15.07.1993 (17:00 hrs.) by Meera Borvankar, the then Supdt. of Police, CID, Pune. The confession of A-30 corroborates that the appellant participated in the landing, transportation and safe keeping of weapons that landed at Dighi in January, 1993 and which were ultimately used in the Bombay Bomb Blasts. A summary of the confession of A-30 implicating the appellant is as under:-

(i) The appellant is an associate of Mohd. Dossa.
(ii) On 09.01.1993, the appellant participated in the landing at Dighi.
(iii) After the landing at Dighi, police intercepted the trucks.
(iv) Uttam Poddar went to Shabbir Kadri's (AA) house where the appellant was also present.

Confessional Statement of Janardhan Pandurang Gambas (A-81)

Confessional statement of A-81 under Section 15 of TADA has been recorded on 20.05.1993 (17:30 hrs.) and 21.05.1993 (17:15 hrs.) by Shri T.S. Bhai, the then Supdt. of Police, Raigad-Alibaug, Maharashtra. The prosecution submitted that the confession of A-81, a fisherman, who participated in the landing at Dighi, while not specifically naming the appellant, corroborates with the confession of the appellant insofar as the landing and transportation of arms and ammunition that landed at Dighi is concerned.

Confessional Statement of Mohd. Kasam Lajpuria @ Mechanic Chacha @ Mohd. Kalia (A-136)

Confessional statement of A-136 under Section 15 of TADA has been recorded on 09.11.1999 (15:15 hrs.) and 10.09.1999 (09:00 hrs.) by Shri O.P. Chhatwal, the then Supdt. of Police, CBI, New Delhi. A summary of the confession of A-136 is as under:

(i) The appellant is an important member of Mohd. Dossa gang.
(ii) On 06.01.1993, the appellant attended the meeting with Customs officials, viz., R.K. Singh and Sayyed, arranged by one Padwal (PW-146) at Hotel Persian Darbar wherein it was decided to pay Rs. 9-10 lakhs for smooth landing of the consignment.
(iii) On 08.01.1993, as per the instructions of Mohd. Dossa, he alongwith Feroz went to Alibaugh-Mhasala on a Yamaha Motorbike to inform R.K. Singh and Syed about the proposed landing of arms and ammunitions. He along with Feroz also went to inform Uttam Poddar and Shabbir Kadri for making arrangements for the landing.
(iv) On 09.01.1993, on the day of landing, he alongwith Feroz, Qayum, Shafi Charsi and other labourers was present at Dighi Jetty.
(v) The appellant, on the instructions of A-138, told A-136 to load the goods into the trucks.
(vi) The appellant was traveling in a tempo and the vehicles carrying smuggled arms and ammunitions were intercepted by the police.
(vii) After the bomb blasts, A-136 met A-134 in Nepal while he was absconding.

181) From the perusal of the aforesaid confession of A-136, it is clear that the appellant was actively involved in landing of arms and ammunitions at Dighi and their subsequent transportation and was an important member of the Mohd. Dossa gang, who were the main conspirators of the bomb blasts. The confession of A-136, therefore, corroborates with the confession of A-134 in material aspects.

Deposition of Prosecution Witnesses:

182) The prosecution has relied upon the depositions of several prosecution witnesses to establish the involvement of the appellant in the criminal conspiracy. Relevant facts from the deposition of witnesses that incriminate the appellant have been enumerated below:

Deposition of Yeshwant Balu Lotle (PW-154)

At the relevant time, he was posted as an officer in the Central Excise Department. He attended the meeting between customs officers, viz., R.K.Singh (A-102) and M.S. Sayyed (A-90) and Mohd. Dossa on 06.01.1993 at Hotel Pesian Durbar, Panvel. His deposition, therefore, corroborates with the confession of A-134 that a meeting between Customs officers and Mohd. Dossa was held on 06.01.1993 at Hotel Persian Durbar, Panvel.

Deposition of Dinesh Gopal Nakti (PW-95)

His deposition reveals that he worked as a labourer with Uttam Poddar (A-30). He deposed further that around 12 persons gathered on 09.01.1993 on the instructions of Uttam Poddar to load several bags at Dighi in tempo. Deposition of PW-95, therefore, corroborates with the confession of A-134,

that Uttam Poddar arranged labour for loading and unloading of goods at Dighi on 09.01.1993 and that landing took place on the same day.

Deposition of Krishnakant Nathuram Birade (PW-96)

PW-96 was another labourer present at Dighi Jetty during the landing. His deposition also corroborates with the confession of A-134 and PW-95 in that Uttam Poddar (A-30) arranged for labour for loading and unloading of goods at Dighi Jetty on 09.01.1993.

Deposition of Dilip Bhiku Pansare (PW-97)

PW-97 reveals as under:-

(i) He was working as a Mechanic in the State Transport Corporation.

(ii) He drove one of the two trucks bearing No. 5533 in which silver, as told to him by Shabbir Kadri, was loaded on 09.01.1993 at Dighi Jetty.

(iii) He stated that at Gongdhar Phata, he was stopped by a police jeep.

(iv) He stated that the police men boarded the said truck and started shouting that there was silver in the truck.

(v) He stated that, in the meanwhile, another truck also came following his truck and the police men also boarded the said truck and the persons who were traveling in the said truck said 'Saab Andar Math Jao, Andar Kaanch ka Saman Hai'.

(vi) He stated that, thereafter, Shabbir Kadri came and started asking Patil Sahib (A-116) "what had happened".

(vii) He stated that he took A-116 nearby a white car which was stationed behind the said truck.

(viii) He stated that meanwhile A-30 and A-82 also came there and they talked for about half an hour.

(ix) He stated that, thereafter, 5 silver bricks were taken out of the truck bearing No. 5533 and were kept in the police jeep.

(x) He stated that when he left the said spot, the other truck alongwith the police jeep was still there.

(xi) He stated that the person who shouted to take out the keys of my truck was at the rear side portion of the truck.

(xii) He stated that the police checked his truck for 15 minutes and took 10 minutes for checking the other truck.

The above deposition of PW-97 corroborates the confession of A-134 that goods which had landed at Dighi were loaded in a truck and the same were intercepted by the police officers and after negotiations, they were let off.

Deposition of Vyankatesh Hirba Rane (PW-588)

He was a police officer who deposed about the recovery of wooden boxes from Shabbir's village. His deposition corroborates with the confession of the appellant that about 3-4 wooden boxes and a few canvas bags containing arms and ammunitions that had landed at Dighi Jetty on 09.01.1993 had remained at the house of Shabbir Kadri (AA). PW-588, at the instance of PW-378, recovered the said three wooden boxes and six military coloured bags from a creek vide seizure panchnama dated 08.04.1993 (Exh. 503). 3 wooden boxes containing 44 magazines of AK-56 rifles and 6 canvas bags each containing 2 tin boxes, each box containing 750 rounds were recovered. Thus, there were total 12 tin boxes containing 9000 rounds of AK-56 rifles.

Deposition of Janu Kamlaya Vetkholi (PW-378)

PW-378 was a fisherman and catches fishes in Murud creek. He corroborates with the deposition of PW-588 in material aspect.

Deposition of Ashok K. Chandgude (PW-670)

PW-670 sent the items recovered above to the FSL for opinion vide Panchnama Exhibit 2471 dated 23.05.1993. Exhibit 2442 is the opinion received from FSL.

Deposition of Satyakant Rohinikant Saikia (PW-481)

PW-481 recorded the confession of the appellant which cleary establishes that the same was recorded in compliance with Section 15 of TADA and the rules framed thereunder and as such is admissible as evidence against him. His deposition shows that PW-481 asked the appellant whether he had been beaten up or induced into making the confession to which the appellant replied in the negative. Only when PW-481 was convinced that the appellant wanted to make a voluntary confession, the confession was actually recorded. A further time of 24 hrs. was also given to the appellant to rethink his decision of making a confession.

Deposition of Saujibhai Ghemarbhai Chaudhari (PW-678)

Deposition of PW-678 dated 10.07.2000 establishes that the appellant was arrested by him from his village in District Bijnor, Uttar Pradesh in connection with the Bombay Bomb Blast case and that the appellant volunteered to make a confession on 18.08.1995 while being interrogated. Thereafter, PW-678 sent a requisition letter to PW-481 for recording of the confession of the appellant.

183) From the materials, it is clear that:

(i) He was a key member of the Mohd. Dossa gang.

(ii) He participated in the landing of silver ingots and arms and ammunitions at Dighi Jetty on 09.01.1993.

(iii) He participated in the transportation and safe keeping of the arms and ammunitions that landed at Dighi and carried these weapons to Shabbir’s village.

(iv) Even when he was absconding after the bomb blasts, he continued to smuggle goods and was involved in the illegal activities on the instructions of Mohd. Dosa.

(v) He even committed offence while he was declared proclaimed offender.

(vi) On his arrest, one AK-56 rifle, two magazines and 88 cartridges were recovered. The said arms and ammunitions were out of the goods that landed at Dighi Jetty on 09.01.1993.

184) The confession of A-134 along with the confessions of A-133, A-30, A-81 and A-136 coupled with the deposition of prosecution witnesses establish the appellant’s participation in the criminal conspiracy and, more particularly, his participation in the landing of arms and ammunitions at Dighi. It is to be noted that the appellant was fully aware that the boxes which landed at Dighi Jetty on 09.01.1993 contained arms and ammunitions and he helped in the transportation of the same after landing of such weapons. Some of these weapons were subsequently recovered by PW-588.

Sentence:

185) The prosecution has brought to our notice that the appellant was given full opportunity to defend himself on the question of quantum of sentence. His statement was recorded on 20.10.2006 (Exh. 2995) in which he prayed that the following factors, amongst others, may be considered while determining his sentence:

(i) He has been in custody since his arrest in April, 1995;
(ii) His children and wife are dependent on him;
(iii) He lost his parents while in custody and wishes to join his wife and daughters; and
(iv) He has assured to lead the life of a new law abiding citizen.

186) A perusal of the impugned order shows that the learned Designated Court duly considered all these factors.

187) In the light of the above discussion, we confirm the conviction and sentence awarded by the Designated Court to the appellant and the appeal is liable to be dismissed.

Criminal Appeal No. 401 of 2008

Mohd. Kasam Lajpuria
@ Mechanic Chacha (A-136) ... Appellant(s)

vs.

The State of Maharashtra,
through Superintendent of Police,
CBI-STF, Mumbai ... Respondent(s)

WITH

Criminal Appeal No. 1023 of 2012

The State of Maharashtra,
through CBI .... Appellant(s)

vs.

Mohd. Kasam Lajpuria
@ Mechanic Chacha (A-136) .... Respondent(s)

188) Mr. Chander Uday Singh, learned senior counsel appeared for the appellant (A-136) and Mr. Mukul Gupta, learned senior counsel duly assisted by Mr. Satyakam, learned counsel for the respondent (CBI).

Criminal Appeal No. 401 of 2008

189) The instant appeal is directed against the final judgment and order of conviction and sentence dated 17.10.2006 and 23.05.2007 respectively, whereby the appellant (A-136) has been convicted and sentenced to rigorous imprisonment for 10 (ten) years by the Designated Court under TADA for the Bombay Bomb Blast Case, Greater Bombay in B.B.C. No.1/1993.

Charges:

190) A common charge of conspiracy was framed against all the co-conspirators including the appellant. The relevant portion of the said charge is reproduced hereunder:

> "During the period from December, 1992 to April, 1993 at various places in Bombay, District Raigad and District Thane in India and outside India in Dubai (U.A.E.) and Pakistan, entered into a criminal conspiracy and/or were members of the said criminal conspiracy whose object was to commit terrorist acts in India and that you all agreed to commit following illegal acts, namely, to commit terrorist acts with an intent to overawe the Government as by law established, to strike terror in the people, to alienate sections of the people and to adversely affect the harmony amongst different sections of the people, i.e. Hindus and Muslims by using bombs, dynamites, hand grenades and other explosive substances like RDX or inflammable substances or fire-arms like AK-56 rifles, carbines, pistols and other lethal weapons, in such a manner as to cause or as likely to cause death of or injuries to any person or persons, loss of or damage to and disruption of supplies of services essential to the life of the community, and to achieve the objectives of the conspiracy, you all agreed to smuggle fire-arms, ammunitions, detonators, hand grenades and high explosives like RDX into India and to distribute the same amongst yourselves and your men of confidence for the purpose of committing terrorist acts and for the said purpose to conceal and store all these arms, ammunitions and explosives at such safe places and amongst yourselves and with your men of confidence till its use for committing terrorist acts and achieving the objects of criminal conspiracy and to dispose off the same as need arises. To organize training camps in Pakistan and in India to import and undergo weapons training in handling of

arms, ammunitions and explosives to commit terrorist acts. To harbour and conceal terrorists/co-conspirators, and also to aid, abet and knowingly facilitate the terrorist acts and/or any act preparatory to the commission of terrorist acts and to render any assistance financial or otherwise for accomplishing the object of the conspiracy to commit terrorist acts, to do and commit any other illegal acts as were necessary for achieving the aforesaid objectives of the criminal conspiracy and that on 12.03.1993 were successful in causing bomb explosions at Stock Exchange Building, Air India Building, Hotel Sea Rock at Bandra, Hotel Centaur at Juhu, Hotel Centaur at Santacruz, Zaveri Bazaar, Katha Bazaar, Century Bazaar at Worli, Petrol Pump adjoining Shiv Sena Bhavan, Plaza Theatre and in lobbing handgrenades at Macchimar Hindu Colony, Mahim and at Bay-52, Sahar International Airport which left more than 257 persons dead, 713 injured and property worth about Rs.27 crores destroyed, and attempted to cause bomb explosions at Naigaum Cross Road and Dhanji Street, all in the city of Bombay and its suburbs i.e. within Greater Bombay. And thereby committed offences punishable under Section 3(3) of TADA (P) Act, 1987 and Section 120-B of IPC read with Sections 3(2)(i)(ii), 3(3)(4), 5 and 6 of TADA (P) Act, 1987 and read with Sections 302, 307, 326, 324, 427, 435, 436, 201 and 212 of Indian Penal Code and offences under Sections 3 and 7 read with Sections 25 (1A), (1B)(a) of the Arms Act, 1959, Sections 9B (1)(a)(b)(c) of the Explosives Act, 1884, Sections 3, 4(a)(b), 5 and 6 of the Explosive Substances Act, 1908 and Section 4 of the Prevention of Damage to Public Property Act, 1984 and within my cognizance."

In addition to the above-said principal charge of conspiracy, the appellant was also charged on the following counts:

At head Secondly: The appellant, in pursuance of the aforesaid criminal conspiracy and during the period January, 1993 to March, 1993, abetted and knowingly and intentionally facilitated acts preparatory to terrorist acts

(a) By attending the meeting at Hotel Persian Darbar, Panvel on 06.01.1993 along with co-accused in which co-accused customs officers allowed Mohd. Dossa (AA) and his associates to carry on smuggling activities in their jurisdiction;

(b) He participated along with landing agent Uttam Poddar (A-30) participated in landing of arms, ammunitions and handgrenades at Dighi on 09.01.1993 and also participated in the transportation of the said arms, ammunitions and handgrenades to the residence of Shabir Kadri (AA) at Agarwada for its concealment; and

(c) He participated in transportation of the said contraband from Dighi when it was intercepted at Gondghar Phata by police officers of Shrivardhan Police Station and on medication the said truck was allowed to proceed for illegal gratification, thereby, he committed an offence under Section 3(3) of TADA.

At head Thirdly: The appellant with intent to aid the terrorists, contravened the provisions of the Arms Act, 1959, the Arms Rules, 1962, the Explosives Act, 1884 and the Explosive Substances Act, 1908 and participated in the landing of arms and ammunition, their transportation and thereby committed an offence punishable under Section 6 of TADA.

191) The charges mentioned above were proved against the appellant (A-136) except the charge mentioned at head firstly. The Designated Judge found the appellant guilty on the aforesaid charges which are enumerated herein below:

Conviction and Sentence:

(i) The appellant has been convicted for the offence of conspiracy under Section 3(3) of TADA and sentenced to RI for 10 years alongwith a fine of Rs. 50,000/-, in default, to further undergo RI for 1 year. (charge secondly)

ii) The appellant has also been convicted under Section 6 of TADA and has been sentenced to RI for 10 years along with a fine of Rs. 1,00,000/-, in default, to further undergo RI for 3 years. (charge thirdly)

6.

7.

8.

Evidence

192) The evidence against the appellant (A-136) is in the form of:-

(i) his own confession;

(ii) confessions made by other co-conspirators; (co-accused);

(iii) testimony of prosecution witnesses; and

(iv) documentary evidence.

Confesssional Statement of Mohd. Kasam Lajpuria @ Mohd. Kalia @ Mechanic Chacha (A-136)

193) The involvement of A-136 in the conspiracy is evident from his own confession under Section 15 of TADA recorded on 09.11.1999 (15:40 hrs.) and 10.11.1999 (09:00 hrs.) by Shri O.P. Chhatwal (PW-684), the then SP, CBI-STF, New Delhi. We have gone through his entire confession. His confession reveals as under:-

(i) The appellant was a Motor mechanic and was previously jailed under COFEPOSA for 1 year. He met Mohd. Dossa (AA) in jail and he started working with him after release.

(ii) He was called as Mechanic Chacha.

(iii) Uttam Poddar (A-30) was a landing agent of Mohd. Dossa in Raigad area.

(iv) 3 trucks, one numbered as 1051, (which was identified by A-134 as the truck used for carrying weapons unloaded at Dighi Jetty), 2 tempos, one Maruti car, one Maruti van and one Maruti gypsy were used for smuggling. False cavities were also made in trucks and tempos to hide the smuggled goods. These vehicles were brought in false names.

(v) 6-8 months prior to 1993 bomb blasts, a meeting was held between Mohd. Dossa (AA) and Custom Collector Mr. Thapa (A-112) at President Hotel. In the said meeting, the appellant was also present along with other co-accused persons. A-112 told Mohd. Dossa that he can carry out smuggling activities but he must also give some cases of seized goods of smuggling.

(vi) Mohd. Dossa told the appellant and others that his brother Mustafa Dossa will send some arms from Dubai which should be collected at the port.

(vii) On 06.01.1993, a meeting took place between Mohd. Dossa and custom officials at Hotel Persian Durbar, Panvel. The appellant also traveled to Panvel to attend the said meeting. In the meeting, it was decided to pay Rs. 9-10 lacs to Customs officials for single landing.

(viii) A landing took place on 09.01.1993.

(ix) The appellant along with Afsal Gadbad left for Mhasala at 3 p.m. on 09.01.1993.

(x) Thereafter, they met A-30 and all of them then reached Dighi Jetty at 9 O'clock .

(xi) The appellant and others received signal from the ship/launch which came from Dubai on a walkie-talkie. The appellant asked the launch to reach Dighi Jetty.

(xii) About 265 silver bars were loaded in the trucks from the ship. When silver was being uploaded, the captain of ship asked to unload other things too, viz., (i) 15-20 wooden boxes, and (ii) 15-20 tin boxes.

(xiii) A-134 spoke to Mustafa Dossa over telephone about the contents of the boxes and, thereafter, told A-136 to unload the 'samaan' in the truck. 'Samaan' is the lingo for arms in gangster's language.

(xiv) He was travelling in the car and the truck and the tempo loaded with arms were following the car. After taking note of the fact that the truck and the tempo were not following their car, they came back and saw that truck and the tempo had been intercepted by a police party.

(xv) An officer, by name 'Patil' (A-116), stopped the two vehicles and said that he was not paid anything in spite of landings. Meanwhile, A-

30 along with A-82 came there and spoke to Patil (A-116) and it was decided that Rs. 8 lakhs would be given to the police.

(xvi) Patil (A-116) kept 5 silver bars as security for a bribe of Rs. 8 lacs to let the trucks pass through.

(xvii) The truck with arms moved towards village Agarwada where Shabbir Qadri (AA) resided. It is further seen that from Agarwada village, arms were loaded into cavities of another truck and sent to Gujarat. Some arms which could not be fitted into the cavities of trucks left with Shabbir Qadri at his residence.

(xix) He got scared that the arms deposited by Ahmed Aulia in his village might be caught leading perhaps to his arrest also.

(xx) He moved to Nepal after 2-3 months of the blasts to evade arrest. In Nepal, he met Mohd. Dossa (AA), Salim Kutta (A-134), and Feroz (AA), amongst others. He was aware that police was in search of him and that the court has also issued a warrant for his arrest.

(xxi) Some of the rifles unloaded at Dighi Jetty on 09.01.1993 were with Ahmed Aulia who was not returning them. He told his wife about this and she passed this information to Crime Branch.

(xxii) The arms which landed at Dighi were brought from Pakistan near Karachi. One boat went to Porbandar and some arms landed there also.

194) As against this, counsel for the appellant submitted that the appellant came to be arrested on 04.11.1999, i.e., after the evidence of most of the witnesses was over. Shri O.P. Chhatwal (PW-684), the then SP, CBI-STF, New Delhi - the officer who recorded his confession, was present at the time of his arrest. He further pointed out that in spite of his advocate's information that A-136 does not intend to give confession, a confession was obtained from him on 09.11.1999. In the light of the above objections, we have carefully verified his entire statement, procedure followed, voluntariness etc., of the confession and we are satisfied that there is no substance in the above objections. In view of the objection that the Supervising Officer (PW-684 herein) cannot be permitted to record confession of an accused, this Court has rejected this objection vide S.N. Dube vs. N.B. Bhoir & Ors. (2000) 2 SCC 254, Lal Singh vs. State of Gujarat & Anr. (2001) 3 SCC 221 and Mohd. Amin vs. CBI (2008) 15 SCC 49.

195) Upon perusal of the above confession of the appellant, the following facts emerge -

(i) The appellant was a close confidant of Mohd. Dosa gang;

(ii) He participated in the landing at Dighi and subsequent transportation of arms and ammunitions;

(iii) He participated in the meetings and negotiations with Customs and Police officers in January, 1993 to seek permission and to fix the bribe amount for each landing.

(iv) He was a key aide of Mohd. Dossa, who was one of the main co-conspirators of the Bombay Bomb Blast case.

196) It has been contended on behalf of the appellant (A-136) that his confession should not be relied upon as he has retracted his confession and his signatures were obtained under coercion. It is relevant to point out that the appellant (A-136) was produced before the CMM, Bombay on 10.11.1999 (one day after recording his confession) he did not make any such complaint to the CMM and the said fact is clear from the order dated 10.11.1999 which records that the contents of the confession of the appellant (A-136) were read out to him and he admitted all the facts. Further, the confession of the appellant (A-136) is corroborated in material respects with the confessions of A-134, A-30 and A-82 insofar as Dighi landing and interception of trucks by police is concerned and was, thus, truthful and voluntary when made.

Confessional Statements of co-accused:

197) The prosecution pointed out that the involvement of the appellant in committing overt acts, as stated above, is further strengthened in the confessional statements of other co-accused persons which are summarized as under:

Confessional Statement of Mohd. Salim Mira Moiddin Shaikh @ Salim Kutta (A-134)

Confessional statement of A-134 under Section 15 of TADA has been recorded on 18.08.1995 (16:00 hrs.) and 19.08.1995 (16:00 hrs.) by Shri Satyakant Rohinikant Saikia (PW-481), the then DIG-CID Crime and Railways, Gujarat State, Ahmedabad. A brief summary of the confession of A-134 with respect to the appellant is summarized herein under:

(i) A-134 was also the member of Mustafa Majnu Gang and later became body guard of Mohd. Dossa.
(ii) A-136, A-134 and Feroz Abdul Rashid were joint partners of 5% share in smuggling activities. A-136 was an active member of Mohd. Dossa gang and was involved in smuggling activities.
(iii) Tiger Memon used to work with Mohd. Dossa.
(iv) A-134 along with A-136 and other co-accused attended a meeting with custom officers at Hotel Persian Darbar in the first week of January, 1993, wherein rate for each landing was fixed at Rs 7 to 8 lakhs per landing. The meeting went on for 3/4 hrs.
(v) In the presence of A-136, Mohd. Dossa informed after talking with Mustafa Majnu over phone that a large quantity of arms and ammunitions had left Dubai. He directed A-134 and Feroz (AA) to go to Dighi in Mhasala and inform the Custom Officers about the said landing and that the appellant would be making other arrangements in this regard.
(vi) In the night of 09.01.1993, A-136 along with other accused persons had gathered at Dighi Jetty for the landing.
(vii) In the night, at about 11 p.m., A-136 was busy on wireless and was trying to establish contact with the launch coming from Dubai. He left in a small boat and after some time returned with the launch.
(viii) After loading all the boxes, bags and silver ingots they all left Dighi Jetty and on their way, the vehicles were intercepted by the police. The appellant, A-134, A-30, A-82 negotiated with the police and it was decided to release the trucks after keeping silver ingots as security in lieu of a bribe of Rs. 10 lacs.
(ix) He saw the boxes contained AK-56 rifles, empty magazines, hand grenades with pins in separate boxes, and ammunition for AK-56 rifles in tin boxes.
(x) A-136 asked Abdul Qayyum to proceed to Gujarat and to contact Mustafa Dossa @ Mustafa Majnu (brother of Mohd. Dosa).

We are satisfied that the confession of A-134 fully corroborates in material aspects with the confession of the appellant. It is also clear that the appellant was a close confidant of Dossa brothers and he was given the important task to ensure safe landing and its transportation to their respective destinations and the appellant was also present at the time when Mohd. Dossa told A-134 and other co-accused that a large quantity of arms and ammunitions had left Dubai and directed A-134 and Feroz (AA) to go to Dighi in Mhasala and inform the customs officers about the landing and that the appellant would be making other arrangements in this regard.

Confessional Statement of Uttam Shantaram Poddar (A-30)

Confessional statement of A-30 under Section 15 of TADA has been recorded on 12.07.1993 (17:20 hrs.) and 15.07.1993 (17:00 hrs.) by Meera Borvankar, the then Supdt. of Police, CID, Pune. A summary of the confession of A-30 implicating the appellant is as under:-

(i) He was a landing agent and worked for Mohd. Dossa. He described A-136 as the 'main person' in the gang and that A-136 had asked A-30 to work for Mohd. Dosa.
(ii) A-136 came in his white Maruti car to Dighi on 09.01.1993.
(iii) A-136 was interacting with the ship carrying arms through a walkie talkie.
(iv) After landing at Dighi on 09.01.1993, the vehicles were stopped at Gondghar Phata by the police where V.K. Patil (A-116) was present. A-136 made an offer of Rs. 10 lacs to A-116. 175 silver bricks were there in local truck and 100 bricks in another truck. The police asked what was in the boxes to which A-136 replied that the boxes contained watches. Since there was no cash, A-136 gave silver bricks in lieu of cash to police and left with the trucks.

Upon perusal of the confession of A-30 it is clear that the appellant was a close confidant of Mohd. Dossa gang and he negotiated the release of trucks with the police and further misled them about the contents of the same.

Confessional Statement of Jaywant Keshav Gurav (A-82)

Confession statement of Jaywant Keshav Gurav (A-82) under Section 15 of TADA has been recorded on 04.05.1993 and 06.05.1993 (10:00 Hrs) by Shri Tikaram Shrawan Bhal (PW-191), the then Superintendent of Police, Alibaug, Raigad. A-82 does not specifically name the appellant but it corroborates the fact that police officers of Shrivardhan PS had intercepted the truck

of Mohd. Dossa Gang and his 4/5 men negotiated with the police.

Confessional Statement of Janardhan Pandurang Gambas (A-81)

Confessional statement of A-81 under Section 15 of TADA has been recorded on 20.05.1993 (17:30 hrs.) and 21.05.1993 (17:15 hrs.) by Shri T.S. Bhai, the then Supdt. of Police, Raigad-Alibaug, Maharashtra. The prosecution submitted that the confession of A-81, a fisherman, who participated in the landing at Dighi, corroborates with the fact that the appellant was talking on wireless after which a trawler came within 10 minutes towards the Jetty. They unloaded silver bricks and 30 bundles wrapped in gunny clothes around the box and 30 military coloured bags.

198) It is contended by the counsel for the appellant that the confession statements of A-30, A-81 and A-82 cannot be read in evidence against A-136 as they were recorded prior to amendment of TADA i.e. before 22.05.1995. Since we have already dealt with the similar objection in the earlier part of our order, there is no need to traverse the same once again.

Deposition of Prosecution Witnesses:

199) The prosecution has relied upon the depositions of several prosecution witnesses to establish the involvement of the appellant in the criminal conspiracy. The relevant facts from the deposition of witnesses that incriminate the appellant have been enumerated below:

Deposition of Dinesh Gopal Nakti (PW-95)

His deposition reveals that he worked as a labourer with Uttam Poddar (A-30). He deposed further that around 12 persons gathered on 09.01.1993 on the instructions of Uttam Poddar to load several bags at Dighi in a tempo. Deposition of PW-95, therefore, corroborates with the confession of A-136, that Uttam Poddar arranged for labourers for loading and unloading of goods at Dighi on 09.01.1993 and that landing took place on the same day.

Deposition of Krishnakant Nathuram Birade (PW-96)

PW-96 was another labourer present at Dighi Jetty during the landing. His deposition also corroborates with the confession of A-134 and PW-95 in that Uttam Poddar (A-30) arranged for labourers for loading and unloading of goods at Dighi Jetty on 09.01.1993.

Deposition of Dilip Bhiku Pansare (PW-97)

PW-97 reveals as under:-

(i) He was working as a Mechanic in the State Transport Corporation;
(ii) He drove one of the two trucks bearing no. 5533 in which silver, as told to him by Shabbir Kadri, was loaded on 9.1.1993 at Dighi Jetty.
(iii) He stated that at Gondghar Phata he was stopped by a police jeep
(iv) He stated that police men boarded the truck no. 5533 and started shouting that there was silver in the truck.
(v) He stated that, in the meanwhile, another truck also came following his truck and the police men also boarded the truck and the persons who were travelling in the said truck said 'Saab Andar Math Jao, Andhar Kaanch ka Saman Hai' The person from the other truck started shouting chacha, M C Chacha.
(vi) He stated that thereafter Shabbir Kadri came and started asking Patil Sahib (A-116) 'what had happened'
(vii) He stated that he took A-116 nearby a white car which was stationed behind the said truck.
(viii) He stated that meanwhile A-30 and A-82 also came there and the discussion took place for about half an hour.
(ix) He stated that, thereafter, 5 silver bricks were taken out of truck no. 5533 and kept in the police jeep.
(x) He stated that when he left the said spot, the other truck alongwith police jeep was still there
(xi) He stated that the person who shouted to take out the keys of his truck was at the rear side portion of the truck.
(xii) He stated that the police checked his truck for 15 minutes and took 10 minutes for checking the other truck.
(xiii) He stated that the appellant thereafter came to village hanghar along with other co-accused and un-loaded truck bearing no. 5533.

The above deposition of PW-97 corroborates with the confession of the appellant (A-136) that goods which had landed at Dighi were loaded in a

truck and the same were intercepted by the police officers and after negotiations, it were let off.

200) Upon perusal of the entire evidence as placed by the prosecution the following facts emerge:-

(i) The appellant was a close confidant of Mohd. Dossa gang and was close to Dossa brother and did everything to win over their confidence;

(ii) The appellant was aware of the contents even prior to the landing of the goods at Dighi Jetty which fact is clearly discernible from his own confession and confession of A-134;

(iii) The appellant was given the important task of safe landing and its transportation to respective destinations;

(iv) The appellant was coordinating with the launch which fact is duly corroborated even by the depositions;

(v) The appellant negotiated with police officer for release of the goods.

Thus, in view of the above, we reach inescapable conclusion that the appellant has rightly been convicted and sentenced by the Designated Court. The appeal is liable to be dismissed.

Appeal by the State of Maharashtra through CBI:
Criminal Appeal No. 1023 of 2012

201) As regards the appeal filed by the State for conviction under charge mentioned at head firstly, it is to be noted that the Designated Court has held that A-136 acquired knowledge of arms and ammunitions at Dighi Jetty when the goods were being unloaded and has not played any further role except the transportation of the same from Dighi Jetty to Gondghar Phata where they were intercepted by the police party. After careful examination of all the materials placed, we are of the view that in the absence of any positive evidence, A-136 cannot be convicted under the charge mentioned at head firstly, i.e., conspiracy and the Designated Court has rightly acquitted him from the said charge. In the light of the above discussion, the appeal of the State is liable to be dismissed.

202) Considering the evidence brought on record, the Designated Court held (Part 11):

> "43-A) The aforesaid material in confession of A-136 not only reveals his own involvement in Dighi landing episode and himself had become aware at Dighi Jetty that the material brought by sea were also containing arms and ammunitions but also discloses involvement of other co-accused in commission of an act as depicted by the same.
>
> 43-B) The corroborative material to the matters found in confession of A-136 regarding his such a deep involvement in Dighi landing episode is also found in confession of co-accused A-30, 81 & 134.
>
> 43-C) Thus carefully considering material contained in confession of A-136 and that of the aforesaid co-accused definitely leads to the conclusion of A-136 who was close associate of Mohammed Dossa and Mustafa Dossa the main person responsible for Dighi landing, having committed the offences for which he was charged with at head 2nd ly to 3rd ly.
>
> 133) Now considering the acts committed by A-136 and more particularly his continuing with the convoy containing arms, his participation in settlement with the police for allowing the convoy to proceed further inspite of his later on knowledge that the same was containing weapons in light of the aforesaid observation leads to no other conclusion but himself having continued to commit the landing operation and further overt acts now for achieving the object of conspiracy. Similarly taking into account that the contraband goods were to contain arms and ammunition i.e. the smuggled goods which could not have been put for any lawful use fortifies the conclusion of A-136 having abetted the

acts which were committed by the conspirators and/or rendered the assistance to them by contravening the provisions of law. Such a conclusion legitimately flows from the said material even accepting that A-136 had earlier no knowledge that the goods which had arrived at Dighi Jetty were containing the arms.

271) Now considering the liability of A-136 as revealed from the earlier discussion but without once again repeating the dilation made earlier it can be said that the same having revealed that A-136 had become aware about the nature of goods after he was told regarding the same and the direction of accused Mustafa Dossa by A-134. As dilated earlier, it is clear that though A-136 had continued with the said operation i.e. the operation of smuggling for which he had agreed earlier and in the process having committed the offence u/s.3 (3) of TADA still he cannot be said to be guilty for the offence of conspiracy to which A-134 was said to be party. Needless to add that considering the acts committed by A-136, his liability remained confined to having committed the offence u/s.3(3) and Sec. 6 of TADA".

Sentence:
203) It is contended by the counsel for the appellant that A-136 was arrested on 04.11.1999 and has already undergone the sentence of about more than 8 = (eight and a half) years of actual imprisonment. The Designated Court also heard the appellant on the quantum of sentence. Taking note of all the materials and proved charges mentioned at head secondly and thirdly, we are satisfied that the sentence awarded by the Designated Court cannot be said to be excessive. On the other hand, we are of the view that the sentence awarded by the Designated Court to the appellant is justifiable and acceptable, hence, the appeal is liable to be dismissed.

Criminal Appeal Nos. 976-977 of 2008

Nasir Abdul Kader Kewal
@ Nasir Dakhla (A-64) .....Appellant(s)

vs.

The State of Maharashtra,
through STF, CBI, Mumbai ...Respondent(s)

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204) Mr. Priyadarshi Manish, learned counsel appeared for the appellant (A-64) and Mr. Mukul Gupta, learned senior counsel duly assisted by Mr. Satyakam, learned counsel for the respondent.
205) The present appeals are directed against the final judgment and order of conviction and sentence dated 05.10.2006 and 31.05.2007 respectively, whereby the appellant (A-64) has been convicted and sentenced to rigorous imprisonment (RI) for life by the Designated Court under TADA for the Bombay Bomb Blast Case, Greater Bombay in B.B.C. No.1/1993.

Charges:
206) A common charge of conspiracy was framed against all the co-conspirators including the appellant (A-64). The relevant portion of the said charge is reproduced hereunder:

"During the period from December, 1992 to April, 1993 at various places in Bombay, District Raigad and District Thane in India and

outside India in Dubai (U.A.E.) and Pakistan, entered into a criminal conspiracy and/or were members of the said criminal conspiracy whose object was to commit terrorist acts in India and that you all agreed to commit following illegal acts, namely, to commit terrorist acts with an intent to overawe the Government as by law established, to strike terror in the people, to alienate sections of the people and to adversely affect the harmony amongst different sections of the people, i.e. Hindus and Muslims by using bombs, dynamites, hand grenades and other explosive substances like RDX or inflammable substances or fire-arms like AK-56 rifles, carbines, pistols and other lethal weapons, in such a manner as to cause or as likely to cause death of or injuries to any person or persons, loss of or damage to and disruption of supplies of services essential to the life of the community, and to achieve the objectives of the conspiracy, you all agreed to smuggle fire-arms, ammunitions, detonators, hand grenades and high explosives like RDX into India and to distribute the same amongst yourselves and your men of confidence for the purpose of committing terrorist acts and for the said purpose to conceal and store all these arms, ammunitions and explosives at such safe places and amongst yourselves and with your men of confidence till its use for committing terrorist acts and achieving the objects of criminal conspiracy and to dispose off the same as need arises. To organize training camps in Pakistan and in India to import and undergo weapons training in handling of arms, ammunitions and explosives to commit terrorist acts. To harbour and conceal terrorists/co-conspirators, and also to aid, abet and knowingly facilitate the terrorist acts and/or any act preparatory to the commission of terrorist acts and to render any assistance financial or otherwise for accomplishing the object of the conspiracy to commit terrorist acts, to do and commit any other illegal acts as were necessary for achieving the aforesaid objectives of the criminal conspiracy and that on 12.03.1993 were successful in causing bomb explosions at Stock Exchange Building, Air India Building, Hotel Sea Rock at Bandra, Hotel Centaur at Juhu, Hotel Centaur at Santacruz, Zaveri Bazaar, Katha Bazaar, Century Bazaar at Worli, Petrol Pump adjoining Shiv Sena Bhavan, Plaza Theatre and in lobbing handgrenades at Macchimar Hindu Colony, Mahim and at Bay-52, Sahar International Airport which left more than 257 persons dead, 713 injured and property worth about Rs.27 crores destroyed, and attempted to cause bomb explosions at Naigaum Cross Road and Dhanji Street, all in the city of Bombay and its suburbs i.e. within Greater Bombay. And thereby committed offences punishable under Section 3(3) of TADA (P) Act, 1987 and Section 120-B of IPC read with Sections 3(2)(i)(ii), 3(3)(4), 5 and 6 of TADA (P) Act, 1987 and read with Sections 302, 307, 326, 324, 427, 435, 436, 201 and 212 of Indian Penal Code and offences under Sections 3 and 7 read with Sections 25 (1A), (1B)(a) of the Arms Act, 1959, Sections 9B (1)(a)(b)(c) of the Explosives Act, 1884, Sections 3, 4(a)(b), 5 and 6 of the Explosive Substances Act, 1908 and Section 4 of the Prevention of Damage to Public Property Act, 1984 and within my cognizance."

In addition to the above-said principal charge of conspiracy, the appellant was also charged on the following counts:

At head Secondly; He intentionally facilitated commission of terrorist acts and acts preparatory to terrorist acts by:

a) Going to Pakistan alongwith his co-conspirators via Dubai and acquiring weapons training in handling of arms and ammunitions and explosives with the object of committing terrorist acts;

b) Participating in the landing and transportation of arms, ammunitions and explosives smuggled into India by Tiger Memon and his associates at Shekhadi;

c) Attending conspiratorial meetings at the residence of Nazir Ahmed Anwar Shaikh @ Babloo and Ms. Mobina @ Baya Moosa Bhiwandiwala;

d) Participating in filling RDX in vehicles on the intervening night of 11th/12th March 1993, at Al-Hussaini Building, with the object of causing explosions in Bombay.

207) The charges mentioned above were proved against the appellant (A-64). The appellant has been convicted and sentenced for the above said charges as under:

Conviction and Sentence:

i) The appellant has been convicted for the offence of conspiracy read with the offences described at head firstly and sentenced to RI for life along with a fine of Rs. 25,000/-, in default, to further undergo RI for 6 months. (charge firstly)

ii) The appellant has also been convicted under Section 3(3) of TADA for commission of offences at head secondly and sentenced to RI for life along with a fine of Rs. 25,000/-, in default, to further undergo RI for 6 months. (charge secondly)

Evidence

208) The evidence against the appellant (A-64) is in the form of:-

(i) his own confession;

(ii) confessions made by other co-conspirators; (co-accused);

(iii) testimony of prosecution witnesses; and

(iv) documentary evidence.

Confessional statement of Nasir Abdul Kader Kewal @ Nasir Dakhla (A-64)

209) The involvement of the appellant in the conspiracy is evident from his own confession recorded under Section 15 of TADA on 22.01.1995 (9:15 hrs.) and 24.01.1995 (9:45 hrs.) by Shri H. C. Singh (PW-474), the then Superintendent of Police, CBI/SPE/STF, New Delhi. The said confessional statement is summarized hereinbelow:-

(i) His father-in-law used to run the business of 'matka' in Bandra. He joined his business in 1984, after his marriage. After one year, he started his own business of 'matka' at Mahim alongwith his father-in-law during which period he got introduced and acquainted with Javed Chikna (AA), Yeda Yakub, Anwar Theba and others. He also described Javed Chikna as the 'dada' of that area - Mahim.

(ii) The 'matka' business of his father-in-law closed down. Thereafter, A-64 worked as a driver with one Alamgir Muttonwala of Mahim.

(iii) During December, 1992, riots, Muttonwala's car was burnt down and the appellant was rendered jobless. So, he asked Javed Chikna for a job.

(iv) He again met Javed Chikna for the purpose of job in the last week of January, 1993, at which time, Javed Chikna was waiting for Tiger Memon near Mahim Dargah alongwith Anwar Theba (AA), Abdul Gani Ismail Turk (A-11), Shafi Zariwala (AA) and Rafique Madi (A-46).

(v) At that time, he got introduced to Tiger Memon. He told Tiger that he was unemployed on which Tiger asked the appellant for his passport which he handed over to Javed Chikna.

(vi) He knew that Tiger Memon and his family members were residing at Al-Hussaini Building in Mahim since 1990-91.

(vii) Javed Chikna, Anwar Theba, Abdul Gani Ismail Turk, Shafi Zariwala and Rafique Madi used to visit Tiger's place and accompanied him somewhere.

(viii) The appellant knew that Tiger Memon was a smuggler and a 'big don'.

(ix) Javed Chikna told him to come to Soda Factory at Mahim at 8.30 p.m. as he had to go alongwith others for collection of Tiger Memon's consignment.

(x) Accordingly, the appellant went to Soda factory and from there he went to Hotel Persian Darbar, Panvel alongwith Shafi Jariwala and Farooq Pawale (A-16) in a blue coloured Commander jeep.

(xi) Tiger Memon had also arrived there after sometime alongwith Abdul Gani.

(xii) Thereafter, they all went to Hotel Big Splash, Alibaug where Javed Chikna and others were already present. They all spent the night at Hotel Big Splash. Next day, Dawood Taklya (A-14) and Dadabhai (A-17) had come to meet Tiger Memon and after talking to them, Tiger told everyone that a consignment would reach the seashore at night.

(xiii) Tiger Memon also instructed them to surround Police or Customs

officers in case they arrived. On this, he informed "....We were all ready to follow the instructions of Tiger Memon..."

(xiv) The appellant went to Shekhadi alongwith others where Tiger gave him and others a revolver and told them to remain close to the shore.

(xv) The goods/consignment (60-70 large packets) arrived by sea were brought to the coast by Tiger and others.

(xvi) The above packets were unloaded by some villagers deployed by Dawood Taklya and then loaded into a truck and transported to Waghani Tower.

(xvii) On reaching Waghani Tower, the aforesaid packets were opened. It contained arms, explosives and cartridges. All the arms were kept in the secret cavities made in the jeeps.

(xviii) Thereafter, Tiger Memon directed the appellant and A-12 to drive one of the above jeeps containing arms filled in cavities therein to Bombay and to park the same outside Shanti Nursing Home leaving the keys inside the vehicle.

(xix) Accordingly, the appellant and A-12 drove to Bombay and took a stopover at Khandala. The appellant got scared after seeing the arms and therefore he sneaked out of the hotel room at Khandala when A-12 was asleep and went to Bombay by a State transport bus.

(xx) The appellant was paid Rs. 2,000/- by Javed Chikna for the above work at Shekhadi.

(xxi) After few days, he went alongwith Yeda Yakub, Riyaz Khatri, Karimulla (all absconding), deceased Akbar, Ehtesham (A-58) and Munna (A-24) to Shekhadi again and participated in the landing of arms and ammunitions and explosives.

(xxii) It had come to his knowledge that the aforesaid arms were going to be used to take revenge against Hindus for the demolition of Babri Masjid and that the wires brought by Shafi in his jeep were going to be used to cause blasts in Bombay.

(xxiii) On 17.02.1993, he went to Dubai via Emirates flight. From there, he alongwith other co-accused went to Pakistan. At Islamabad, their passports and tickets were not checked.

(xxiv) He was given a fake name - 'Abdullah' in Pakistan. A-12 told him that they were to be given training in use of arms for taking revenge against Hindus.

(xxv) Thereafter, he underwent weapons training. The training was given by the officers of Pakistan Army.

(xxvi) After completion of the training, he alongwith others went back to Dubai. There were arrangements to board the flight for Dubai without any checking at Islamabad Airport. After reaching Dubai, their passports were checked but no body asked them as to where they had gone; Tiger gave 150 dirhams to each one of them and administered oath of maintaining secrecy regarding the aforesaid training and for taking revenge against Hindus for the demolition of Babri Masjid by swearing on the Quran.

(xxvii) Before leaving from Dubai to Bombay, they were told by Tiger Memon that their passports did not bear any stamp regarding their visit to Pakistan and for the same reason directed them to go through Counter No. 3 during their arrival at Bombay Airport in order to avoid any problem.

(xxviii) Then he returned to Bombay and after 2-3 days, he attended/participated in a meeting at the residence of A-96 on 06.03.1993 where everyone who received training in Pakistan was present.

(xxix) At the aforesaid meeting, at the behest of Tiger Memon, the appellant formed a group with A-100 and they were assigned the task of reconnaissance of Sahar Airport for throwing of hand grenades on aircrafts.

(xxx) Accordingly, on the next day, i.e., on 07.03.1993, he alongwith PW-2 and A-100 conducted the survey of Sahar Airport and realized the difficulty in execution of the same.

(xxxi) In the meeting at Babloo's place on 08.03.1993, A-64 and A-100 expressed the above difficulty to Tiger Memon, but Tiger did not agree to it and told them that the task has to be executed by any means.

(xxxii) He also participated in the second meeting at the residence of A-96 on 10.03.1993 where Tiger Memon directed everyone present therein to be ready for their respective works. All the people present there replied that they all were ready.

(xxxiii) He was present at Al-Hussaini building on the night of 11.03.1993

and he saw RDX being loaded in vehicles. At the instance of Javed Chikna, he also brought 15-16 sacks of iron scrapings kept outside the building compound and kept it between the RDX loaded in the vehicles.

(xxxiv) The appellant stated that the material (RDX) used at Al-Hussaini was similar to the material he saw at Shekhadi and Waghani Tower and it appeared to him that this material was being loaded in the vehicles for the purpose of causing bomb blasts.

(xxxv) The appellant was present at Al-Hussaini building till 3 a.m. and Tiger Memon was also present there.

(xxxvi) The appellant and Parvez decided that in future they would not participate in any such activities.

(xxxvii) After the blast, he went to several places, viz., Ahmedabad, Ajmer, Karnataka and then to Hyderabad fearing arrest by the police.

210) On perusal of the aforesaid confessional statement of the appellant (A-64), the following facts emerge:

(i) The above confession of the appellant brings out and establishes his role/involvement in the conspiracy by way of his close association with Javed Chikna (AA), one of the key conspirators;

(ii) The appellant participated in both the landings of arms and ammunitions and explosives at Shekhadi with complete knowledge of the articles smuggled and their purpose;

(iii) The appellant participated in the transportation of arms to Bombay;

(iv) The appellant participated in the weapon training at Pakistan;

(v) The appellant participated in the conspiratorial meetings at Mobina's as well as Babloo's residence where plans were chalked out for committing terrorist acts.

(vi) The appellant was present at the residence of Tiger Memon at Al-Hussaini Building on the intervening night of 11/12.03.1993 and participated in the filling of RDX for the purpose of causing explosions in various parts of Bombay.

(vii) The appellant took oath that he alongwith others will do 'Jehad' and will take revenge against Hindus and he, on being asked by the Tiger to be ready, replied that he was ready.

211) It has been contended on behalf of the appellant that his confession was recorded at midnight. The said contention is not supported by any record, in fact, the confession was recorded at 9.45 a.m. onwards. The scrutiny of his confession and the procedure followed shows that the appellant has made the above confession voluntarily, without any pressure or coercion and the same has been recorded after following all the safeguards prescribed under Section 15 of TADA and the rules framed thereunder. The said fact has also been proved by Shri H. C. Singh (PW-474).

Confessional Statements of co-accused:

212) Apart from his own confession, the involvement of the appellant has also been disclosed in the confessional statements of the following co-accused. The legality and acceptability of the confessions of the co-accused has already been considered by us in the earlier part of our discussion. The said confessions insofar as they refer to the appellant (A-64) are summarized hereinbelow:

Confessional Statement of Parvez Nazir Ahmed Shaikh (A-12)

Confessional statement of A-12 under Section 15 of TADA has been recorded on 18.04.1993 (14:00 hrs.) and 21.04.1993 (06:50 hrs.) by Shri Prem Krishna Jain (PW-189), the then DCP, Zone X, Bombay. The said confession reveals as under:

(i) A-12 participated in the landing of arms at Shekhadi and one jeep filled with arms was entrusted to him and the appellant.

(ii) The appellant left for Bombay without informing him.

(iii) After the second landing at Shekhadi, the appellant came to stay over at Hotel Persian Durbar, Panvel where A-12 was also staying.

Confessional Statement of Bashir Ahmed Usman Gani Khairulla (A-13)

Confessional statement of A-13 under Section 15 of TADA was recorded on 16.05.1993 (10:30 hrs.) and 18.05.1993 (17:15 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The said confession reveals that the appellant attended the conspiratorial meeting on 10.03.1993 at Mobina's residence in Bandra.

Confessional Statement of Imtiaz Yunus Miya Ghavate (A-15)

Confessional statement of A-15 under Section 15 of TADA was recorded on 07.05.1993 (12:30 hrs.) and 09.05.1993 (13:30 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The said confession reveals that the appellant participated in the landing at Shekhadi.

Confessional Statement of Mohd. Farooq Mohd. Yusuf Pawale (A-16)

Confessional statement of A-16 under Section 15 of TADA was recorded on 20.05.1993 (16:30 hrs.) and 22.05.1993 (16:45 hrs.) by Shri Sanjay Pandey (PW-492), the then DCP, Zone-VIII, Bombay. The said confession reveals that:

(i) The appellant, Usman and Parvez Qureshi were friends of Javed Chikna and were 'brutal' persons;
(ii) At the instance of Javed Chikna, A-16 accompanied him to Shekhadi in a blue coloured jeep alongwith the appellant and others.

Confessional Statement of Shahnawaz Abdul Kadar Qureshi (A-29)

Confessional statement of A-29 under Section 15 of TADA was recorded on 18.05.1993 (18:30 hrs.) and 21.05.1993 (14:45 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The said confession reveals as under:

(i) The appellant accompanied Javed Chikna, A-29 and others in a blue coloured Commander jeep at the time of the first landing of arms at Shekhadi.
(ii) The appellant alongwith A-29 and others went in a jeep to Waghani Tower.
(iii) A-29 met the appellant in Dubai.
(iv) The appellant was present at Al-Hussaini building (house of Tiger) on 11.03.1993.

Confessional Statement of Zakir Hussain Noor Mohd. Shaikh (A-32)

Confessional statement of A-32 under Section 15 of TADA was recorded on 16.05.1993 (11:25 hrs.) and 19.05.1993 (17:30 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The said confession reveals that the appellant underwent training at Pakistan where he was given a fake name 'Abdullah'.

Confessional Statement of Abdul Akhtar Khan (A-36)

Confessional statement of A-36 under Section 15 of TADA was recorded on 19.05.1993 (17:40 hrs.) and 21.05.1993 (18:20 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The said confession corroborates the fact that the appellant travelled to Pakistan via Dubai where he underwent weapons training.

Confessional Statement of Feroz @ Akram Amani Malik (A-39)

Confessional statement of A-39 under Section 15 of TADA was recorded on 19.04.1993 (22:30 hrs.) and 23.04.1993 (20:50 hrs.) by Mr. P.D. Pawar (PW-185), the then DCP, Zone V, Bombay. The said confession reveals as under:

(i) On 07.03.1993, the appellant took A-39 to Babloo's house where Tiger Memon and others also arrived after sometime and a meeting was held.
(ii) On 10.03.1993, the appellant had come alongwith Javed Chikna and others to Bandra. Tiger Memon also came there and informed them that they were required to do the work and for that they will be paid Rs. 5,000/- each.

Confessional Statement of Mohd. Rafiqu Musa Miariwala @ Rafiq Madi (A-46)

Confessional statement of A-46 under Section 15 of TADA was recorded on 21.04.1993 (19:00 hrs.) and 23.04.1993 (21:25 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The said confession reveals that the appellant participated in the landing at Shekhadi.

Confessional Statement of Nasim Ashraf Sherali Barmare (A-49)

Confessional statement of A-49 under Section 15 of TADA was recorded on 16.05.1993 (9:30 hrs.) and 18.05.1993 by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The said confession reveals that the appellant participated in the weapons training at Pakistan.

Confessional Statement of Shaikh Ali Shaikh Umar (A-57)

Confessional statement of A-57 under Section 15 of TADA was recorded on 19.04.1993 (12:00 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The said confession reveals as under:

(i) The appellant was a friend of Javed Chikna.
(ii) On 08/09.02.1993, A-57 went to meet Javed Chikna at Soda Factory where he told him that they all have to go somewhere. At that time, the appellant was also present there.
(iii) Thereafter, all of them went to a place via Goa Highway using a car.
(iv) On 10.02.1993, Shafi took A-57, the appellant and others to Hotel Persian Darbar by a jeep where they all had lunch.
(v) A-57 attended a meeting at a flat in Bandra on 10.03.1993 where the appellant and many others were also present. In the said meeting, Tiger Memon gave a provoking lecture on taking revenge owing to Muslims being killed in the riots; at the instance of Tiger Memon, groups were formed to execute the plans to cause blasts.
(vi) On the intervening night of 11/12.03.1993, Javed Chikna asked the appellant to load Black Soap in the garage. The appellant and A-57 filled iron pieces in the Commander jeep.

Confessional Statement of Shaikh Mohd. Ehtesham (A-58)

Confessional statement of A-58 under Section 15 of TADA was recorded on 15.05.1993 (9:30 hrs.) and 12.06.1993 by Shri Sanjay Pandey (PW-492), the then DCP, Zone-VIII, Bombay. The said confession reveals the fact that the appellant was present at the time of landing at Shekhadi.

Confessional Statement of Gul Mohd. Noor Mohd. Shaikh (A-77)

Confessional statement of A-77 under Section 15 of TADA was recorded on 17.04.1993 (14:10 hrs.) and 19.04.1993 (18:00 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The said confession reveals as under:

(i) The appellant went to Dubai from Bombay on 17.02.1993 alongwith others.
(ii) From Dubai, the appellant went to Pakistan via PIA flight alongwith others.
(iii) All of the above participated in the training of arms and ammunitions at Pakistan.
(iv) After completion of the training, they returned to Dubai and were administered oath of secrecy and committing Jehad by Tiger Memon.

Confessional Statement of Mohd. Rafiq Usman Shaikh (A-94)

Confessional statement of A-94 under Section 15 of TADA was recorded on 14.05.1993 (18:30 hrs.) and 16.05.1993 by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The said confession reveals as under:

(i) He met the appellant and other co-accused persons in Dubai.
(ii) All of them went to Islamabad from Dubai.
(iii) All of them participated in the training of arms and ammunition at Pakistan.
(iv) After completion of the training and returning to Dubai, they all were administered oath of secrecy by Tiger Memon.

Confessional Statement of Niyaz Mohd. @ Aslam Iqbal Ahmed Shaikh (A-98)

Confessional statement of A-98 under Section 15 of TADA was recorded on 17.05.1993 (14:30 hrs.) and 20.05.1993 (11:30 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The said confession reveals as under:

(i) The appellant participated in the weapons training at Pakistan alongwith A-98 and others.
(ii) The appellant along with others was administered oath in order to

combat 'Jehad'.

(iii) The appellant returned from Dubai to Bombay on 03.03.1993 alongwith Gullu and A-98.

Confessional Statement of Mohd. Parvez Zulfikar Qureshi (A-100)

Confessional statement of A-100 under Section 15 of TADA was recorded on 15.04.1993 (23:30 hrs.) and 17.04.1993 (17:00 hrs.) by Sanjay Pandey (PW-492), the then DCP, Zone-VIII, Bombay. The said confession reveals as under:

(i) The appellant was a friend of Javed Chikna and he accompanied Javed Chikna, A-100 and others while going to seashore in a jeep.

(ii) The appellant participated in the weapons training at Pakistan alongwith A-100 and others.

(iii) After completion of the training, they returned to Dubai and were administered oath of secrecy and of committing 'Jehad' by Tiger Memon.

213) A perusal of the confessional statements of all the above accused, viz., A-12, A-13, A-15, A-16, A-29, A-32, A-36, A-39, A-46, A-49, A-57, A-58, A-77, A-94, A-98 and A-100 clearly establish the fact that it corroborate with the confessional statement of the appellant (A-64). After consideration of all the abovesaid confessional statements of the co-accused, the involvement of the appellant in the conspiracy is established in as much as:-

(i) He was closely associated with Javed Chikna (AA) who was one of the main conspirator in the blasts;

(ii) He actively participated in the landing of arms and explosives at Shekhadi smuggled for the purpose of committing terrorist acts;

(iii) He went to Pakistan and underwent training in arms and ammunitions and explosives;

(iv) After completion of the aforesaid training, he took oath of maintaining secrecy and committing Jehad alongwith other co-accused in Dubai at the instance of Tiger Memon;

(v) He participated in the conspiratorial meetings held at the residence of Babloo and Mobina where plans for executing the blasts were discussed;

(vi) At the behest of Tiger Memon, he formed a group with A-100; they were assigned the task of throwing hand grenades on aircrafts at Sahar airport and conducting survey of the same;

(vii) He conducted survey of Sahar Airport alongwith PW-2 and A-100;

(viii) He actively participated in the filling operation carried out at Al-Hussaini Buiilding compound on the intervening night of 11/12.03.1993.

(ix) On being asked by Tiger Memon to be ready, he replied that he was ready to perform his job.

(x) He admitted his guilt by telling A-12 that he will not participate in any such activities in future; and

(xi) After the blasts, he fled from Bombay fearing the arrest.

214) Mr. Manish, learned counsel for the appellant, contended that the confession was subsequently retracted on 15.02.1995. It is also contended that the confessional statements of the co-accused above as relied upon by the prosecution against him were subsequently retracted, and therefore, it is not safe to base the conviction on any of the aforesaid confessions. It has been further contended on behalf of the appellant that he was, in fact, arrested on 29.12.1994 though his arrest has been shown on 03.01.1995 and on 04.01.1995, he was produced before the Magistrate and that he was tortured, coerced and induced to make a confession. The prosecution pointed out that upon perusal of the order dated 04.01.1995, it is clear that no complaint of any ill-treatment at the hands of police was made by the appellant or his counsel and further even during the remand till 25.01.1995 he was permitted to meet his relatives and was allowed to consult his lawyer. The prosecution further pointed out that the confession of the appellant was recorded on 22.01.1995 and 24.01.1995 and on 04.02.1995, 20.02.1995 and 13.03.1995 he was produced before the Designated Court and on which dates also no complaint of any torture, coercion or ill-treatment at the hands of police was made by the appellant. In fact, after recording of the confession, on 25.01.1995, he was produced before the Magistrate alongwith his confessional statement. In view of the same, there is no

substance in the contention raised by the counsel for the appellant. The legality and acceptability of the confessions of the co-accused has already been considered by us in the earlier part of our discussion.

Deposition of Prosecution Witnesses:

215) Apart from the aforesaid evidence, the involvement and the role of the appellant in the conspiracy, as stated above, is disclosed by the deposition of various prosecution witnesses which are as under:

Deposition of Mohd. Usman Jan Khan (PW-2)

The relevant material in his evidence is as follows:-

(i) PW-2 knows the appellant. He identified the appellant in the court.

(ii) He met the appellant and other co-accused on 02.02.1993 at Hindustan Soda Factory and they all left for Panvel and, thereafter, to Alibaug in a blue coloured Commander jeep and stayed in the same room alongwith the appellant at Hotel Big Splash, Alibaug.

(iii) On the same day, at Hotel Big Splash, Tiger Memon convened a meeting in which he addressed that Muslims have suffered a lot in the communal riots in Bombay and Surat and they all have to help him in taking revenge against Hindus for this. He also told them that arms and ammunitions were about to arrive from Pakistan on that day.

(iv) The appellant was present in the aforesaid meeting. Thereafter, all of them left for Shekhadi Coast in two Commander jeeps.

(v) The appellant was present at Waghani Tower where arms and ammunitions were transported and eventually opened, unloaded and then stored in the Tower.

(vi) The appellant also participated in the second landing at Shekhadi.

(vii) The appellant underwent training at Pakistan.

(viii) On completion of the aforesaid training and after returning to Dubai, PW-2 alongwith the appellant and others took oath of maintaining secrecy by swearing on the Quran.

(ix) The appellant attended the meeting at Shakil’s house on 07.03.1993 where groups for surveying targets were formed. PW-2 and the appellant were in the same group.

(x) The appellant and PW-2 conducted survey of the Sahar Airport as a prospective target.

(xi) The appellant attended meeting at Babloo’s residence on 08.03.1993.

(xii) The appellant attended meeting at Shakil’s residence on 10.03.1993.

The above deposition of PW-2 duly corroborates with the confession of the appellant as well as the confessions of the co-accused in as much as the appellant was present at Hindustan Soda Factory alongwith other co-accused, participated in both the landings of arms and explosives at Shekhadi, was well aware of the fact that the aforesaid arms and ammunitions were smuggled and landed for committing terrorist acts in order to avenge the demolition of Babri Masjid and atrocities committed on Muslims in the communal riots, participated in the weapons training at Pakistan, took oath of maintaining secrecy and committing Jehad alongwith other co-accused in Dubai at the instance of Tiger Memon, participated in the conspiratorial meetings and lastly he conducted survey of the Sahar airport as a prospective target.

Deposition of Anthony S. Mathew (PW-221)

At the relevant time, PW 221 was working as an Immigration Officer and proved the departure of the appellant to Dubai on 17.02.1993 from Bombay. The relevant entries on the Embarkation Card (X-340) dated 17.02.1993 concerning the departure which was duly stamped by him have been marked as Exh Nos. 979 and 979-A.

Deposition of Ramchandra Barkade (PW-231)

PW-231 is an Immigration Officer and has proved the arrival of the appellant to Bombay on 03.03.1993 from Dubai. The relevant endorsements on the Disembarkation Card (X-373) dated 03.03.1993 concerning the arrival have been marked as Exh. Nos. 1019 and 1019-A.

Deposition of Abdul Siddiqui (PW-367)

Further, the deposition of PW-367 also proved that the appellant went to Dubai on 17.02.1993 from Sahar Airport, Bombay. PW-367 was also travelling to Dubai on 17.02.1993 by the same flight. His deposition reveals the following:

(i) He knew the appellant for the last 10 years as he resided in Mahim, where the appellant also resided.
(ii) He travelled to Dubai on 17.02.1993 by an Emirates Airlines flight.
(iii) When PW-367 was standing in the queue for boarding pass, he saw the appellant and Yeda Yakub who were also standing in the same queue.
(iv) He identified the appellant in the court.
(v) In Dubai, he stayed in Hotel Delhi Darbar where he again met the appellant.

The aforesaid deposition of PW-367 corroborates with the confession of the appellant as well as the evidence of PW-2.

Deposition of Harishchandra Singh (PW-474)

The confession of the appellant was recorded by PW-474, the then Superintendent of Police, CBI/SPE/STF, New Delhi. His deposition reveals the following:

(i) He had not taken any part in the investigation of the Bombay Blasts case.
(ii) He received a telephonic request from Deputy Superintendent of Police, Rishi Prakash of CBI/STF, Bombay, for recording the confession of the appellant; accordingly, he reached the Bombay office on 22.01.1995.
(iii) Thereafter, a written request was made to him for recording the said confession and after making endorsement upon the request letter, he asked for the appellant to be produced before him.
(iv) He ensured that the appellant was making a voluntary confession and that he was not pressurized, coerced or threatened by anybody to give the confession. He also gave him time till 24.01.1995 for re-consideration of his desire to make a confession.
(v) On 24.01.1995, the appellant was again produced before him. They were the only persons in the Chamber.
(vi) He ascertained whether sufficient time was given to the appellant for re-consideration or not and warned the appellant that any confession made by him would be used against him.
(vii) He recorded the confession of the appellant and also read it over to him.
(viii) The appellant told him that the confession was correctly recorded and the same was also signed by him as well as by PW-474.

216) We are satisfied with the deposition of PW-474 that the confession of the appellant was recorded in accordance with the prescribed rules and after following the due process of law. No discrepancy whatsoever has been established on behalf of the appellant pertaining to the aforesaid deposition.

Sentence:

217) The prosecution pointed out that the appellant was given full opportunity to defend himself on the question of quantum of sentence. His statement was recorded on 06.10.2006 in which he prayed that the following factors, amongst others, may be considered while determining his sentence:

(i) He has been in custody since 03.01.1995;
(ii) His wife is suffering from TB and low blood pressure since last 8 years and his son had suffered head injury;
(iii) He had been to Shekhadi under the impression that it was landing of silver goods and after realizing that it was not silver, he disassociated himself from the landing;
(iv) He was forced to participate in the second landing since Tiger Memon, Javed Chikna and others had threatened to kill his family members;
(v) In the said conspiratorial meetings, he protested to carry out any operation as it was the month of Ramzan but he was threatened by Tiger and Javed that he would be shot on the spot if he backs out;
(vi) If he gets a chance, he would be able to look after his family and would be able to lead the life as a law abiding citizen; and
(vii) Ultimately, he was not involved in the commission of any terrorist act and for the acts committed by him, he had undergone sufficient sentence since he has been in custody for about 12 years (as on date approx. 18 years), so a lenient view be taken while awarding sentence to him.

218) It is pointed out by the prosecution that all the above factors have been duly considered by the Designated Court and the aforesaid contentions are devoid of any merit having regard to the fact that the appellant had sufficient potential for commission of terrorist acts owing to have

acquired training in handling sophisticated arms and ammunitions at Pakistan. Further, it is stated that his contention that he was forced to participate in the second landing since Tiger Memon, Javed Chikna and others had threatened to kill his family members is not tenable as despite being threatened at the time of first landing and after getting knowledge that the said landing was of arms and ammunitions and explosives, he chose to remain silent instead of approaching the police or taking recourse to law. Despite all this, he participated in the second landing at Shekhadi, and moreover, he went to Pakistan at the instance of the same persons who had threatened him. Further, when Tiger Memon asked him to be ready, he told him that he was ready on the night of 11.03.1993.

219) It is clear that the contention on behalf of the appellant that he dissociated himself at the time of the first landing at Shekhadi is not made out in the light of other evidence on record. Further, the appellant participated in the acts mentioned above willingly and with complete knowledge. He knew that the arms and ammunitions, RDX and hand grenades which were smuggled into India at Shekhadi would be used for committing terrorist acts. It is clearly established from his confession that Tiger Memon had told his associates that the smuggled arms were to be used to take revenge for the demolition of Babri Masjid and for causing blasts in Bombay. As submitted, the above fact had come to his knowledge after the landing at Shekhadi and much before his going to Pakistan. Despite that, he went to Pakistan via Dubai and received training in handling of arms and ammunitions and explosives. Even in Dubai, he attended the conspiratorial meeting convened by Tiger Memon in which oath was administered to maintain secrecy regarding the aforesaid training and to take revenge.

220) It is also relevant to note that after realizing that explosions took place at various places in Bombay on 12.03.1993, the appellant absconded and remained away from the clutches of law until he was arrested by the police. He stayed at various places in assumed names in order to conceal his identity to avoid his arrest. Thus, his fleeing away after the explosions took place only goes to show his association and involvement in the conspiracy to cause blasts and, undoubtedly, he was a part of it. It also points out his guilt in the commission of the said acts in furtherance of the conspiracy.

221) Therefore, in view of the entire evidence enumerated above, we hold that the appellant was actively involved in the conspiracy to cause blasts in Bombay and in consequence of the said involvement, he has committed the said offences for which he has been charged and the sentence awarded by the Designated Court to the appellant is justified. Consequently, the appeals fail and are liable to be dismissed.

Criminal Appeal No. 616 of 2008

Salim Rahim Shaikh @ Salim
Babu Wrane (A-52) .... Appellant(s)

vs.

The State of Maharashtra,
through CBI-STF, Mumbai .... Respondent(s)

222) Mr. Mustaq Ahmed, learned counsel appeared for the appellant (A-52) and Mr. Mukul Gupta, learned senior counsel duly assisted by Mr. Satyakam, learned counsel for respondent (CBI)

223) The instant appeal is directed against the final order and judgment of conviction and sentence dated 04.12.2006 and 14.06.2007 respectively, whereby the appellant (A-52) has been convicted and sentenced to rigorous imprisonment (RI) for life by the Designated Court under TADA for the Bombay Bomb Blast Case, Greater Bombay in B.B.C. No.1/1993.

Charges:

224) A common charge of conspiracy was framed against all the co-conspirators including the appellant (A-52). The relevant portion of the said charge is reproduced hereunder:

> "During the period from December, 1992 to April, 1993 at various places in Bombay, District Raigad and District Thane in India and outside India in Dubai (U.A.E.) and Pakistan, entered into a criminal

conspiracy and/or were members of the said criminal conspiracy whose object was to commit terrorist acts in India and that you all agreed to commit following illegal acts, namely, to commit terrorist acts with an intent to overawe the Government as by law established, to strike terror in the people, to alienate sections of the people and to adversely affect the harmony amongst different sections of the people, i.e. Hindus and Muslims by using bombs, dynamites, hand grenades and other explosive substances like RDX or inflammable substances or fire-arms like AK-56 rifles, carbines, pistols and other lethal weapons, in such a manner as to cause or as likely to cause death of or injuries to any person or persons, loss of or damage to and disruption of supplies of services essential to the life of the community, and to achieve the objectives of the conspiracy, you all agreed to smuggle fire-arms, ammunitions, detonators, hand grenades and high explosives like RDX into India and to distribute the same amongst yourselves and your men of confidence for the purpose of committing terrorist acts and for the said purpose to conceal and store all these arms, ammunitions and explosives at such safe places and amongst yourselves and with your men of confidence till its use for committing terrorist acts and achieving the objects of criminal conspiracy and to dispose off the same as need arises. To organize training camps in Pakistan and in India to import and undergo weapons training in handling of arms, ammunitions and explosives to commit terrorist acts. To harbour and conceal terrorists/co-conspirators, and also to aid, abet and knowingly facilitate the terrorist acts and/or any act preparatory to the commission of terrorist acts and to render any assistance financial or otherwise for accomplishing the object of the conspiracy to commit terrorist acts, to do and commit any other illegal acts as were necessary for achieving the aforesaid objectives of the criminal conspiracy and that on 12.03.1993 were successful in causing bomb explosions at Stock Exchange Building, Air India Building, Hotel Sea Rock at Bandra, Hotel Centaur at Juhu, Hotel Centaur at Santacruz, Zaveri Bazaar, Katha Bazaar, Century Bazaar at Worli, Petrol Pump adjoining Shiv Sena Bhavan, Plaza Theatre and in lobbing handgrenades at Macchimar Hindu Colony, Mahim and at Bay-52, Sahar International Airport which left more than 257 persons dead, 713 injured and property worth about Rs.27 crores destroyed, and attempted to cause bomb explosions at Naigaum Cross Road and Dhanji Street, all in the city of Bombay and its suburbs i.e. within Greater Bombay. And thereby committed offences punishable under Section 3(3) of TADA (P) Act, 1987 and Section 120-B of IPC read with Sections 3(2)(i)(ii), 3(3)(4), 5 and 6 of TADA (P) Act, 1987 and read with Sections 302, 307, 326, 324, 427, 435, 436, 201 and 212 of Indian Penal Code and offences under Sections 3 and 7 read with Sections 25 (1A), (1B)(a) of the Arms Act, 1959, Sections 9B (1)(a)(b)(c) of the Explosives Act, 1884, Sections 3, 4(a)(b), 5 and 6 of the Explosive Substances Act, 1908 and Section 4 of the Prevention of Damage to Public Property Act, 1984 and within my cognizance."

In addition to the above-said principal charge of conspiracy, the appellant was also charged on the following counts:

At head Secondly; The appellant committed an offence punishable under section 3(3) of TADA by doing the following overt acts:

(a) He participated in the training in handling of arms, ammunitions and explosives in Pakistan for which he travelled in a ficticious name as 'Salim Babu Wrane';

(b) He assisted in the preparation of vehicle bombs by filling explosives therein, at Al-Hussaini Building for planting the same at various places in Bombay and its suburbs.

At head Thirdly; The appellant drove to Mahim Causeway on 12.03.1993 alongwith other co-accused in a Maruti Van bearing No. MP-13-D-385 and lobbed hand grenades on the hutments causing explosions resulting into

death of 3 persons, injuries to 6 others and damage to property worth Rs. 50,000/- and thereby committed an offence punishable under section 3(3) of TADA read with Section 149 IPC.

At head Fourthly; The appellant, alongwith other co-accused persons, was a part of an unlawful assembly as mentioned above, while throwing the hand grenades at the said hutments at Mahim Causeway, which resulted in death, injuries and damage to properties and thereby committed an offence punishable under Section 148 IPC.

At head Fifthly; The appellant, by causing the death of 3 persons as mentioned above, committed an offence punishable under Section 302 read with Section 149 IPC.

At head Sixthly; The appellant, by causing the abovesaid explosions, which caused death and injuries to various persons committed an offence punishable under Section 307 read with Section 149 IPC.

At head Seventhly; The appellant, by causing the abovesaid explosions, which resulted in injuries to various persons also committed an offence punishable under Section 324 read with Section 149 IPC.

At head Eighthly; The appellant, by causing the aforesaid explosions, which resulted into damage to the properties worth Rs. 50,000/-, committed an offence punishable under section 436 read with section 149 IPC.

At head Ninthly; During the period from January, 1993, to 26th April 1993, the appellant possessed one 9mm mouser pistol and 48 cartridges, which he concealed at Benganwadi hutments, Gowandi, unauthorisedly, in a notified area of Greater Bombay and thereby committed an offence punishable under Section 5 of TADA.

At head Tenthly; The appellant, possessed arms and ammunition and concealed the same with intent to commit terrorist acts and thereby committed an offence punishable under Section 6 of TADA.

At head Eleventhly; The appellant, by possessing the above mentioned arms and ammunitions, unauthorisedly, committed an offence punishable under Section 3 and Section 7 read with Section 25(1-A) and 25(1-B)(a) of the Arms Act, 1959.

225) The charges mentioned above were proved against the appellant (A-52). The appellant has been convicted and sentenced for the above said charges as under:

Conviction and Sentence:

i) The appellant has been convicted for the offence of conspiracy under Section 3(3) of TADA and under Section 120-B of IPC and sentenced to RI for life along with a fine of Rs. 25,000/-, in default, to further undergo RI for 6 months. (charge firstly)

(ii) The appellant has also been convicted for the commission of offence punishable under Section 3(3) of TADA and sentenced to RI for 10 years alongwith a fine of Rs. 25,000/-, in default, to further undergo RI for 6 months. (charge secondly)

(iii) The appellant has also been convicted for the commission of offence punishable under Section 3(3) of TADA and sentenced to RI for 14 years alongwith a fine of Rs. 25,000/-, in default, to further undergo RI for 6

months. (charge thirdly)
(iv) The appellant has also been convicted for the commission of such acts as found proved under Section 148 of IPC and sentenced to undergo RI for 1 year. (charge fourthly)
(v) The appellant has also been convicted for the commission of such acts as found proved under Section 302 read with Section 149 of IPC and sentenced to RI for life along with a fine of Rs. 25,000/-, in default, to further undergo RI for 6 months. (charge fifthly)
(vi) The appellant has been convicted for the commission of such acts as found proved under Section 307 read with Section 149 of IPC and sentenced to RI for 10 years along with a fine of Rs. 10,000/-, in default, to further undergo RI for 3 months. (charge sixthly)
(vii) The appellant has been convicted for the commission of such acts as found proved under Section 324 read with Section 149 of IPC and sentenced to RI for 2 years. (charge seventhly)
(viii) The appellant has been convicted for the commission of such acts as found proved under Section 436 read with Section 149 of IPC and sentenced to RI for 10 years along with a fine of Rs. 5,000/-, in default, to further undergo RI for 1 month. (charge eighthly)
(ix) The appellant has been convicted for the commission of such acts as found proved under Section 5 of TADA and sentenced to RI for 6 years along with a fine of Rs. 25,000/-, in default, to further undergo RI for 6 months. (charge ninthly)
(x) The appellant has also been convicted for the offence committed under Section 3 and Section 7 read with Section 25(1A) and 25(1B)(a) of the Arms Act, 1959, but no separate sentence was awarded on the said count. (charge eleventhly)
9.
10.
11.

Evidence
226) The evidence against the appellant (A-52) is in the form of:-
(i) his own confession;
(ii) confessions made by other co-conspirators; (co-accused);
(iii) testimony of prosecution witnesses; and
(iv) documentary evidence.

Confessional statement of Salim Rahim Shaikh @ Salim Babu Wrane (A-52)

227) The involvement of the appellant in the conspiracy is evident from his own confession recorded under section 15 of TADA on 15.04.1993 (20:45 hrs.) and 18.04.1993 (10:30 hrs.) by Mr. P.D. Pawar (PW-185), the then DCP, Zone V, Bombay. We were taken through his entire confessional statement. His confession reveals as under:-
(i) He was residing at Mahim during 1992-93 when riots took place.
(ii) His maternal aunt was killed during riots in January, 1993 and he took oath to take revenge for her death.
(iii) On 11.02.1993, at the instance of Javed Chikna (AA), he was taken by Mohammed Usman Jan Khan (PW-2) and Mohammed Farooq Mohammed Yusuf Pawale (A-16) to the Airport from where he left for Dubai alongwith others for training.
(iv) He knew Tiger Memon and was aware of his illegal activities.
(v) In Dubai, on 13.02.1993, he attended a meeting in which Tiger Memon and Javed Chikna discussed about the communal riots.
(vi) On 14.02.1993, he alongwith Javed Chikna and other co-accused, went to Dubai from Islamabad at the instance of Tiger.
(vii) In Islamabad, on 17.02.1993, he alongwith others was taken to the training camp in a jungle where they all were trained in firing arms, opening and assembling of LMG, throwing handgrenades, RDX, detonators, timer pencils etc.
(viii) On 28.02.1993, he alongwith other co-accused persons left Islamabad and reached Dubai where Tiger Memon administered oath to them on Quran that they will not fight with each other and will not disclose anything about the said training and will cause loss to those persons who had caused loss to their community.
(ix) On 03.03.1993, he alongwith others, returned to Bombay.
(x) Thereafter, he attended a meeting held by Tiger at the residence of Babloo at Khar in which they decided to blast bombs in Bombay after

Ramzan.

(xi) Next day, he attended another meeting at Tiger's residence in which Tiger gave Rs. 5,000/- to each one of them and he was attached with the group of Usman.

(xii) Next day, he also attended another meeting at the flat of Tiger Memon.

(xiii) On 10.03.1993, he, alongwith PW-2 and Firoz @Akram Amani Malik (A-39) went to Bharat Petroleum Refinery, Chembur for survey. Thereafter, they met Tiger Memon and informed him about the unfeasibility of causing blast at the said refinery owing to the presence of security guards.

(xiv) Thereafter, on the instructions of Tiger Memon, he again went to survey the said refinery along with Bashir and Zakir Hussain Noor Mohammed Shaikh (A-32) and informed Tiger and Usman about the risk.

(xv) On 11.03.1993, he and others were told by Usman, in the presence of Tiger, to throw hand grenades in Fishermen's colony, Mahim, at which time the appellant refused but agreed to drive the vehicle for them.

(xvi) On the same day, in the night, he went to the Tiger's residence at Al-Hussaini building where Tiger, Javed Chikna and others were also present. In the garage of the said building, he saw that RDX was being loaded into the vehicles and scooters. He parked some of the RDX-laden vehicles outside the garage since he thought his hands would become black due to the colour of RDX.

(xvii) On 12.03.1993, at about 2.00 p.m., he took a pistol with magazines and drove A-32, Mohammed Moin Faridulla Qureshi (A-43) and others in Tiger's Maruti van containing 30 hand grenades to Mahim slope Koliwada, where the hand grenades were to be thrown as per the plan.

(xviii) After reaching Mahim Koliwada, while he was on the driver's seat and the car engine being on, other persons sitting in the van came out of the vehicle and threw hand grenades causing blasts.

(xix) After throwing hand grenades, they immediately boarded the said Maruti van which was driven by him and sped away towards Bandra Reclamation whereafter going a little ahead and taking a right turn, all five persons got down from the van and left. At that time, A-39 took the bag of hand grenades in which A-52's pistol was also kept and left with all others.

(xx) Thereafter, he (A-52) parked the vehicle there and went to Tiger's house where he had parked his scooter and then went to Versova at his cousin's house.

(xxi) On the next day, since the police was investigating the blasts, he took refuge in Madina Masjid and did not go to his house.

228) On perusal of the above confession of the appellant, the following facts emerge -

(i) He took oath to take revenge for his aunt's death in the riots;

(ii) He participated in a meeting at Dubai where Tiger Memon and Javed Chikna spoke about communal riots;

(iii) He participated in the weapons training at Pakistan for the purpose of committing terrorist acts;

(iv) He took oath on holy Quran that he will remain together, will not fight with each other and will not tell anyone about the training including his wife, children and relatives and further will cause loss to the persons who had caused loss to the people of his community;

(v) He was present in the garage at Al-Hussaini Building in the night intervening 11/12.03.1993 when RDX was being filled in vehicles;

(vi) He parked the vehicles loaded with RDX in and out of the garage;

(vii) He drove co-accused persons in a Maruti Van No. MP-13-D-385 to Mahim Causeway where hand grenades were thrown on the hutments.

(viii) He carried a pistol along with him.

229) A perusal of his entire confession, questions put by the recording officer and the procedure followed clearly show that the abovesaid confession is voluntary, without any pressure or coercion and the same has been recorded after following all the safeguards enumerated under Section 15 of TADA and the rules framed thereunder.

230) Apart from his own confession, the involvement of the appellant has also been disclosed in the confessional statements of the following co-accused. The legality and acceptability of the confessions of the co-accused has already been considered by us in the earlier part of our discussion. The said confessions insofar as they refer to the appellant

(A-52) are summarized hereinbelow:

Confessional Statement of Bashir Ahmed Usman Gani Khairulla (A-13)

Confessional statement of A-13 under section 15 of TADA has been recorded on 16.05.1993 (10:30 hrs.) and 18.05.1993 (17:15 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The confession of A-13 with reference to the appellant is summarised below:

(i) On 11.03.1993, the appellant was present at Tiger's residence along with other co-accused persons.
(ii) He was present in the garage of Al-Hussaini Building when RDX was being loaded in vehicles.
(iii) In the morning of 12.03.1993, the appellant was present at Tiger's residence, where Javed gave Rs. 5,000/- to everyone present therein including the appellant and told A-13 to accompany the appellant along with others in a Maruti van in order to throw hand grenades at Mahim Causeway slope.
(iv) The appellant drove the Van to Mahim Causeway in which A-13, Mehmood, Feroz, Zakir and Abdul Akhtar were also seated.
(v) On reaching the fishermen's colony at Mahim, the appellant informed everyone in the van to be ready to throw hand grenades and parked the van on the roadside after which they threw handgrenades at fishermen's colony and caused explosions. The appellant was also carrying a pistol with him.

Confessional Statement of Mohd. Farooq Mohd. Yusuf Pawale (A-16)

Confessional statement of A-16 under Section 15 of TADA has been recorded on 20.05.1993 (16:30 hrs.) and 22.05.1993 (16:45 hrs.) by Shri Sanjay Pandey (PW-492), the then DCP, Zone-VIII, Bombay. The confession of A-16 with reference to the appellant is summarised below for ready reference:

(i) On 10.02.1993, the appellant went to Dubai along with other accused persons.
(ii) On 13.02.1993, he alongwith other co-accused persons travelled to Islamabad (Pakistan) for training.
(iii) He along with others attended the training of dismantling and handling of fire arms and bombs including chemical bombs as well as hand grenades in Islamabad (Pakistan).
(iv) On 07.03.1993, he attended a conspiratorial meeting held at Tiger's residence at Khar wherein Tiger said that he was going to cause riots in Bombay and informed everyone not to disclose it to anyone.
(v) On 12.03.1993, A-16 handed over the pistol and rounds to the appellant.

Confessional Statement of Mohd. Iqbal Mohd. Yusuf Shaikh (A-23)

Confessional statement of A-23 under Section 15 of TADA has been recorded on 20.05.1993 (10:00 hrs.) and 22.05.1993 (10:00 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The confession of A-23 with reference to the appellant is summarised hereunder:

(i) He was present at the residence of Tiger Memon.
(ii) He drove the vehicles in and out of the garage which were loaded with RDX.
(iii) On 12.03.1993, he was present at the time when Javed and Usman distributed a bag full of hand grenades amongst the co-accused persons.

Confessional Statement of Shahnawaz Abdul Kadar Qureshi (A-29)

Confessional statement of A-29 under Section 15 of TADA has been recorded on 18.05.1993 (18:30 hrs.) and 21.05.1993 (14:45 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The confession of A-29 with reference to the appellant is summarised below for ready reference:

(i) He attended training in Pakistan for handling of arms and explosives.

(ii) On 12.03.1993 he along with other co-accused was present in the flat of Tiger Memon at Al-Hussaini Building where Javed Chikna gave Rs. 5,000/- to everyone present there.

Confessional Statement of Zakir Hussain Noor Mohd. Shaikh (A-32)

Confessional statement of A-32 under Section 15 of TADA has been recorded on 16.05.1993 (11:25 hrs.) and 19.05.1993 (17:30 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The confession of A-32 with reference to the appellant is summarised hereunder:

(i) He travelled to Pakistan and was given a fictitious name 'Imran' and participated in weapons training.
(ii) He left Dubai on 03.03.1993 and came back to Bombay.
(iii) He was present at the flat of Tiger Memon on 10.03.1993. On the said date, Tiger Memon formed a group for survey of the Refinery.
(iv) He was present at Al-Hussaini in the night intervening 11/12.03.1993.

(v) Usman gave pistol to the appellant and Nasim.
(vi) The appellant drove co-accused persons to Mahim Causeway where he asked them to get down and do their job of throwing hand grenades which they did and caused explosions.
(vii) After the explosion, the appellant called them into the car and drove it fast.

Confessional Statement of Abdul Khan @ Yakub Khan Akhtar Khan (A-36)

Confessional statement of A-36 under Section 15 of TADA has been recorded on 19.05.1993 (17:40 hrs.) and 21.05.1993 (18:20 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The confession of A-36 with reference to the appellant is summarised below:

(i) He participated in the weapons training at Pakistan.
(ii) After return from Pakistan, Tiger Memon administered oath to all the accused persons by placing their hands on holy Quran that they will do Jehad after reaching Bombay and will take revenge for atrocities committed on Muslim community and whatever they have learnt they will not disclose it to anyone.
(iii) He was present at Al-Hussaini building along with co-accused persons.

(iv) He parked the vehicles in and out of the garages after they were filled with RDX.
(v) He was present at Al-Hussaini in the morning of 12.03.1993 and he along with others received Rs. 5,000/- from Javed Chikna.
(vi) He drove the co-accused persons and asked them to get down and explode bombs at Mahim Causeway.

Confessional Statement of Firoz @ Akram Amani Malik (A-39)

Confessional statement of A-39 under Section 15 of TADA has been recorded on 19.04.1993 (22:30 hrs.) and 23.04.1993 (20:50 hrs.) by Mr. P.D. Pawar (PW-185), the then DCP, Zone V, Bombay. The confession of A-39 with reference to the appellant is summarised below:

(i) He participated in the training of handling of arms, ammunitions and explosives.
(ii) After return from Pakistan, Tiger Memon administered oath to all of them on holy Quran that they will not disclose it to anyone.
(iii) On 07.03.1993, he attended a conspiratorial meeting at the residence of Nasir Babloo.
(iv) On 10.03.1993, the appellant, along with other co-accused persons, surveyed Shiv Sena Bhawan.
(v) He was present at Al-Hussaini building where Tiger Memon told them that they will be given Rs. 5,000/- each.
(vi) He alongwith other co-accused surveyed Chembur Refinery.
(vii) He drove the co-accused in a van to Mahim Causeway where they lobbed hand granades at fishermen's colony and caused explosions.

Confessional Statement of Nasim Ashraf Shaikh Ali Barmare (A-49)

Confessional statement of A-49 under Section 15 of TADA has been recorded on 16.05.1993 (9:30 hrs.) and 18.05.1993 by Shri Krishan Lal

Bishnoi (PW-193), the then DCP, Zone III, Bombay. The confession of A-49 with reference to the appellant is summarised below:

(i) He participated in the weapons training at Pakistan.

(ii) He was asked by Javed to bring Maruti Car for the purpose of filling RDX in the garage.

Confessional Statement of Shaikh Ali Shaikh Umar (A-57)

Confessional statement of A-57 under Section 15 of TADA has been recorded on 19.04.1993 (12:00 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. A-57 with reference to the appellant stated that he participated in the filling of RDX in the vehicles.

Confessional Statement of Nasir Abdul Kadar Kewal @ Nasir Dhakla (A-64)

Confessional statement of A-64 under Section 15 of TADA has been recorded on 22.01.1995 and 24.01.1995 by Shri H.C. Singh (PW-474), the then Superintendent of Police, CBI/SPE/STF, New Delhi. The confession of A-64 with reference to the appellant is summarised below:

(i) He participated in the training in handling of arms and ammunitions at Pakistan.

(ii) He along with other co-accused persons took oath that they will take revenge against Hindus and will not disclose to anybody about the training.

(iii) He was present at Al-Hussaini in the night intervening 11/12.03.1993.

Confessional Statement of Mohd. Rafiq Usman Shaikh (A-94)

Confessional statement of A-94 under Section 15 of TADA has been recorded on 14.05.1993 (18:30 hrs.) and 16.05.1993 by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. A-94, with reference to the appellant, stated that he participated in the weapons training at Pakistan.

Confessional Statement of Niyaz Mohd. @ Aslam Iqbal Ahmed Shaikh (A-98)

Confessional statement of A-98 under Section 15 of TADA has been recorded on 17.05.1993 (14:30 hrs.) and 20.05.1993 (11:30 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The confession of A-98 with reference to the appellant, is summarised below:

(i) He received training in handling of arms and ammunition, hand grenades and making of bombs by using RDX.

(ii) He along with other co-accused took oath of maintaining secrecy and committing Jehad for the sake of Islam. Further, he was also present when Tiger spoke about the atrocities committed on Muslims during the communal riots in Bombay and taking revenge for the same.

Confessional Statement of Parvez Mohd. Parvez Zulfikar Qureshi (A-100)

Confessional statement of A-100 under Section 15 of TADA has been recorded on 15.04.1993 (23:30 hrs.) and 17.04.1993 (17:00 hrs.) by Shri Sanjay Pandey (PW-492), the then DCP, Zone-VIII, Bombay. The confession of A-100 with reference to the appellant is summarised below:

(i) He participated in the weapons training at Pakistan.

(ii) He was present in Dubai when at the instance of Tiger Memon, he and other co-accused took oath of maintaining secrecy and committing Jehad for the sake of Islam. Further, he was also present when Tiger spoke about the atrocities committed on Muslims during the communal riots in Bombay and taking revenge for the same.

(iii) He was present at Al-Hussaini building when Tiger distributed Rs. 5,000/- to all the accused persons

(iv) He was present at Tiger Memon’s residence at Al-Hussaini Building on the night intervening 11/12.03.1993.

(v) He was driving the Maruti Van.

231) A perusal of the confessional statements of all the above accused, viz., A-13, A-16, A-23, A-29, A-32, A-36, A-39, A-49, A-57, A-64, A-94, A-98 and A-100 clearly establish the fact that it corroborate with each other and also with the confessional statement of the appellant (A-52). After consideration of all the abovesaid confessional statements of the co-accused, the involvement of the appellant in the conspiracy is established in as much as:-

(i) The appellant attended the conspiratorial meeting at the residence of Tiger Memon.
(ii) The appellant was present at Al-Hussaini in the night intervening 11/12.03.1993 and witnessed the filling of RDX in vehicles.
(iii) On 12.03.1993, Javed and Usman (PW-2) distributed a bag full of hand grenades amongst the co-accused persons in his presence.
(iv) The appellant traveled to Dubai on 11.02.1993 and returned Bombay on 03.03.1993.
(v) The appellant attended training in arms and ammunitions at Pakistan where he was given a fictitious name.
(vi) The appellant, along with other co-accused persons, took oath on Holy Quran to combat Jehad against Hindus.
(vii) The appellant drove the co-accused persons in a Maruti Van to Mahim Causeway where they lobbed hand grenades at Fishermen's colony causing explosions.
(viii) The appellant was also carrying a pistol.
(ix) The confession of A-32 shows that the appellant was not merely a driver, in fact, he was the Commander of his group.

232) It is contended by Mr. Mustaq Ahmed on behalf of the appellant that the appellant has been addressed to by various accused persons by different names, viz., 'Salim Bazarwala', 'Salim Dandekar', 'Salim Driver' and 'Salim Kapadwala' which refer to different persons and not the appellant-accused whose real name is Salim Babu Wrane alias Salim Rahim Shaikh and thus, in view of this, there is doubt as to the actual presence of the appellant-accused referred to in the above confessions. Further, it is also contended that the prosecution has falsely 'manufactured' a case against him by putting different names. The appellant-accused was known by different names to different co-accused persons and this does not, in anyway, dispute the involvement of the appellant in the crime. From the confessions of the co-accused and also from his own confession, it is evident that there is corroboration of his involvement in the crime. Each confession corroborates with the fact of presence of the appellant and connects him to the crime. Moreover, there is no contradiction or discrepancy in the above confessions pertaining to the involvement of the appellant. The appellant has been identified by the eyewitnesses which further corroborate the confessions and establish the identity of the appellant.

233) It is further contended on behalf of the appellant that the prosecution has mislead the court and created confusion by referring to and addressing Mahim Causeway as Mahim Koliwada at one place and as Fishermen's Colony at the other and sometimes also referred to it as Macchimar Colony. From the materials placed, it is established that Mahim Causeway, Mahim Koliwada, Fishermen's Colony and Macchimar Colony are one and the same locality and is locally known and addressed by these names by its residents. Further, this locality is inhabited by the Marathi and Konkani speaking fishermen community. Hence, the names 'Koliwada' and 'Macchimar' mean fishermen's colony in Konkani and Marathi respectively.

Deposition of Prosecution Witnesses:

234) Apart from the aforesaid evidence, the involvement and the role of the appellant in the conspiracy, as stated above, is disclosed by the deposition of various prosecution witnesses which are as under:

Deposition of Mohd. Usman Jan Khan (PW-2)

The relevant material in his evidence is as follows:-

i) He deposed that he knows the appellant as Salim Bazarwala.
ii) He identified the appellant in the court.
(iii) He deposed that the appellant travelled to Pakistan via Dubai.
(iv) He deposed that the appellant was given a fictitious name 'Imran'.
(v) He deposed about the training at Pakistan.
(vi) He deposed that the appellant was present in the conspiratorial meeting.
(vii) He deposed that the appellant was present in the meeting at the residence of Babloo.
(viii) He deposed about the survey of refinery along with the appellant and other co-accused.
(ix) He deposed that the appellant was given a pistol and rounds.
(x) He deposed that the appellant was given the role to move the vehicles in and out of the garage which were filled with RDX.
(xi) He deposed that the appellant along with other co-accused was instructed by Javed Chikna to throw hand grenades at Fishermen's

Colony, Mahim on 12.03.1993.

The above deposition of the Approver duly corroborates with the confessions of the co-accused as well as the confession made by the appellant.

Eye witnesses:

Deposition of Laxman Patil (PW-5)

PW-5 is a resident of the Fishermen's Colony. He witnessed the incident while he was waiting on the road.

(i) He deposed that the driver was sitting in the van and the engine was in start condition.

(ii) He identified the appellant in court.

(iii) He identified the appellant in TIP dated 15.05.1993 conducted by Special Executive Magistrate, Moreshwar P. Thakur (PW-469) at Mahim Police Station.

(iv) He also identified the vehicle No. MP-13-D-385 as the car in which the appellant came to Mahim slope in order to throw hand grenades.

Deposition of Santosh Patil (PW-6)

PW-6 is a resident of Mahim Fishermen's Colony and deposed as under:

(i) He deposed that he witnessed the incident while he was waiting near the Municipal School at Mahim Slope and further saw that the driver of the van was calling for the persons lobbing the hand grenades to get into the car after explosion.

(ii) He identified the appellant in the court.

(iii) He identified the appellant in TIP dated 15.05.1993 conducted by Special Executive Magistrate (PW-469) at Mahim Police Station.

(iv) He also identified the vehicle No. MP-13-D-385 as the car in which the appellant came to Mahim slope in order to throw hand grenades.

Deposition of Shashikant Shetty (PW 13)

PW-13 is also an eye-witness and a resident of Mahim Fishermen's Colony. He witnessed a part of the incident when he came out after hearing the sound of explosions. His deposition reveals as under:-

(i) He identified the appellant in Court being the driver of the van.

(ii) He also identified the appellant in the identification parade dated 15.05.1993 conducted by Special Executive Magistrate (PW-469) at Mahim police station.

(iii) He also identified the Maruti Van bearing No. MP-D-13-385 in which accused persons came to Mahim Machhimar colony.

(iv) He lodged an FIR in respect of explosions at Mahim Fishermen's colony.

235) All the aforesaid eye witnesses to the said incident have consistently deposed that the appellant was driving the van which came to fishermen's colony and caused explosions. They have identified the appellant in the court. They further identified the Maruti van bearing number MP-D-13-385 as the vehicle in which the appellant alongwith other co-accused came to the scene of the crime and fled away after lobbing the hand grenades.

Investigation, Recoveries and Reports:

236) The aforesaid eye-witnesses viz., PWs-5, 6 and 13 have duly identified the appellant in the TIP dated 15.05.1993 conducted by Shri Moreshwar Thakur (PW-469) for which memorandum panchnama marked as Exh. 1515 was prepared.

237) On 12.03.1993, Shantaram Gangaram Hire (PW-562), Police Officer, visited the blast site i.e., Fishermen's colony at Mahim and prepared spot panchnama in the presence of panch witnesses, viz., Dayaram Timbak Akare and Mahendra Sadanand Mehre. PW-562, in the presence of Tamore (PW-330) and experts collected the articles from the blast site vide Panchnama Exh. No. 1221 which were sent to the Forensic Science Laboratory ("FSL") for opinion. The FSL Report Exh. Nos. 1943, 1943-A(i) and 1943-A(ii) proved the remnants to be explosives and part of hand grenades.

238) The deposition of panch witness Sakharam Sathe (PW-35) reveals discovery of a pistol and 48 rounds belonging to the appellant from Zopada in Bainganwadi. The discovery was made at the instance of the appellant who

led the police party and the panchas to the place of recovery. Exh. 102 is the panchanama of all the events correctly drawn by A.P.I. Shri Kolekar (PW-526). Article Nos. 38 and 39 are the said pistol and 46 intact cartridges and two empties out of 48 cartridges seized by him on 13.04.1993 from the said hutments at Baiganwadi at Govandi is under the panchanama Exh.102.

Evidence regarding injured victims and deceased

239) It is seen from the records that in July, 1993, Achyut Shamrao Pawal (PW-542), Police Inspector, collected the injury certificates of injured persons, namely, Mr. Gurudutt Agaskar, Ms. Rajashri Agaskar and Ms. Sheetal Keni from Bhaba Hospital which amply prove that they sustained injuries during the blast. Injured Shashikant Shetty (PW-13) and Sheetal Keni (PW-412) also proved to have sustained injuries during the blast. Dr. Wadekar (PW-641) and Dr. Krishna Kumar (PW-640) were the doctors who have proved the injury certificates issued to PW-13 and PW-412 respectively.

240) Gajanan Tare (PW-413) (husband of the deceased Gulab Tare) and Karande (PW-414) (nephew of the deceased Hira Dhondu Sawant) claimants of two bodies, have proved the death of Mrs. Gulab Tare (wife of PW-413) and Smt. Hira Dhondu Sawant (PW 414's aunt) in the said incident. PW-482 and PW-480 have established the cause of death to be the injuries received on 12.03.1993. Achyut Shamrao Pawal (PW-542) also proved the death of 3 persons at Fishermen's Colony in the said incident.

Vehicle used for committing the act:

241) It is seen from the materials that the said Maruti Van in which A-13, A-32, A-36, A-39, A-43 and Mehboob Liyaqat Khan (AA) was driven by the appellant to cause blasts at Mahim Fishermen's Colony was arranged by Suleman Lakdawala (PW-365) at the behest of Mohd. Shafi Jariwala (AA). This has also been proved by the said witness. Further, the depositions of Kailash Govind Rao Baheti (PW-342) and Shakeel Suleman Hasham (PW-366) are pertinent as it complete the link relating to purchase/arrangement of the said Maruti Van used in the incident.

Deposition of Kailash Govind Rao Baheti (PW-342)

He deposed as follows:-

> "On 18.01.1993 I had received a telephone call given by Shakil Hasham from Bombay. Shakil requested me to book one red coloured Maruti Van in the name of Asif Darvesh resident of M.G. Road, Indore and another new Maruti Van of blue colour in the name of Shri Kasam Ahmed residing at Indira Nagar, Ujjain. He also requested me to register both the Maruti Van at Indore and send the same to Bombay. He also told me that the payments of the same would be made at Bombay to the driver. I quoted a price of Rs.1,69,000/- per vehicle inclusive of registration and transport charges. I was having red coloured Maruti Van brought by me from M/s Bhatia & Company, Gurgaon, Haryana and blue coloured Maruti Van brought from Vipul Motors, Faridabad, Haryana, in my stock. I had brought both the said vehicles by making advance payment. After receipt of booking from Shakil Hasham for red and blue coloured brand new Maruti Vans, I informed the details of the purchasers to M/s Bhatia Company and M/s Vipul Motors. After receipt of the said letters and bills from both the said companies in the name of purchasers who wanted red and blue Maruti Vans I sent papers of both the Vans for registration to RTO. The blue coloured Maruti Van was registered in the name of Kasam Ahmed at Ujjain RTO. The blue coloured Maruti Van could not be registered at Indore due to lack of E-Form necessary for registration. Thereafter, I sent both the said Vans to Bombay to Shakil Hasham. Shakil Hasham received the delivery and paid Rs.3,38,000/- to my drivers. My drivers gave the said amount to me. I made the necessary entries in my office record for sending the said Vans to Bombay to Shakil Hasham after purchasing the same for the parties told by him. The RTO Authority at Ujjain had given registration Number MP-13-D-0385 to "blue coloured Maruti Van. Today I am not remembering the engine number and chassis number of the said Maruti Van.""

Depostion of Shakeel Suleman Hasham (PW-366)

In his deposition, he deposed that he had asked PW-342 to arrange for two Maruti Vans (red and blue colour) in February, 1993. Both the vans were purchased in Madhya Pradesh and the blue Maruti Van was registered in Ujjain with the registration number MP-13-D-0385. PW-366 further deposed as under:

> "In the same month (February 1993) I had also arranged for one blue

colour and another red colour Maruti Vans also registered at Madhya Pradesh for Suleman Lakdawala. The said vehicles were registered at Madhya Pradesh Indore in the name of the purchasers given to me by Suleman Lakdawala. I had given the work of registration to one Kailash baheti of Indore. Both the said vans were insured by Insurance Agent Rakesh Tiwari before giving the same to Suleman Lakdawala. Both the said vehicles had arrived from Indore. I had sent the same to the Petrol pump of Suleman and asked him to take the delivery from the said drivers who had brought the delivery of the said vehicles. Accordingly he took the delivery by making payment to the drivers."

It is relevant to note that this number and the said blue Maruti Van has been identified by PWs-5, 6 and 13 in their depositions as the vehicle which was involved in the said incident at Fishermen's Colony. Thus, PW-342, therefore, corroborates the deposition of PW-366 in that both the Vans were purchased in Madhya Pradesh and the blue Maruti Van was registered in Ujjain and was given registration number bearing MP-13-D-0385.

242) Further, the deposition of Mukhtar Ahmed (PW-281) reveals that the cavity was prepared by him in the said Maruti Van at the behest of Mohd. Shafi Jariwala (AA). This further corroborates the fact that it is the same vehicle which was used in the Mahim Causeway incident.

Evidence of travel to Dubai for training at Pakistan:

Deposition of Asmita Ashish Bhosale (PW-215)

243) PW-215, an Immigration Officer, proved the Embarkation Card (X-315) (Box no. 18) that was submitted at Sahar Airport on 11.02.1993 concerning the departure of the appellant who was flying to Dubai. The relevant entries have been marked as Exh. Nos. 964, 964-A, 964-A(1) and 964-A(2).

Deposition of Dadasaheb Godse (PW-238)

PW-238, an Immigration Officer proved the arrival of the appellant to Bombay from Dubai on 03.03.1993. The relevant endorsements on the Disembarkation Card (X-394) (Box no. 18) have been marked as Exh. Nos. 1042-A(1) and 1042-A(2) colly.

244) The above depositions further corroborate with the confession made by the appellant that he had been to Dubai on 11.02.1993 and had returned to Bombay on 03.03.1993.

245) In view of the above, it can safely be inferred that the appellant had acquired skill for commission of terrorist acts after the training in handling sophisticated arms and ammunitions at Pakistan. He took oath that he will take revenge for the killing of his aunt during riots and also that he will take revenge from Hindus and will not disclose about the conspiracy to anyone. He engaged himself in commission of acts furthering the object of conspiracy which was heinous having scant disregard for human life. The appellant parked the cars in and out of the garages which were filled with RDX and thereby assisted in the preparation of motor vehicle bombs which were planted by other co-conspirators which caused considerable damage to the property and lives of the people. The appellant was also responsible for taking the other co-conspirators to Mahim Fishermen's Colony for commission of terrorist acts and, thereafter, they fled away from that place and he was placed in a commanding capacity.

246) Pursuant to the conspiracy, the appellant has actively particpated in various conspiratorial acts of planning, training, preparation and execution. The evidence on record clearly proved the charges against the appellant beyond reasonable doubt.

Sentence

247) Regarding sentence, it is seen that the appellant was given full opportunity to put forth his defence on the question of sentence. He filed a statement dated 18.12.2006 on the quantum of sentence (Ex. 3054). All his grievances were duly considered by the Designated Court. In view of our discussion, we fully agree with the conclusion arrived and there is no valid reason for interference. Consequently, the appeal fails and is liable to be dismissed.

Criminal Appeal Nos. 979-980 of 2008

Nasim Ashraf Shaikh Ali Barmare (A-49) ...Appellant(s)

Versus

The State of Maharashtra,
through CBI-STF, Mumbai ...Respondent(s)

248) Ms. Farhana Shah, learned counsel appeared for the appellant (A-49) and Mr. Mukul Gupta, learned senior counsel duly assisted by Mr. Satyakam, learned counsel for the respondent.

249) The aforesaid appeals are directed against the final impugned order and judgment of conviction and sentence dated 25.09.2006 and 17.07.2007 respectively, whereby the appellant (A-49) was found guilty and was sentenced to rigorous imprisonment (RI) for life by the Designated Court under TADA for the Bombay Blast Case, Greater Bombay in B.B.C. No. 1/1993.

Charges:

250) A common charge of conspiracy was framed against all the co-conspirators including the appellant (A-49). The material part of the said charge is as under:

> "During the period from December, 1992 to April, 1993 at various places in Bombay, District Raigad and District Thane in India and outside India in Dubai (U.A.E.) and Pakistan, entered into a criminal conspiracy and/or were members of the said criminal conspiracy whose object was to commit terrorist acts in India and that you all agreed to commit following illegal acts, namely, to commit terrorist acts with an intent to overawe the Government as by law established, to strike terror in the people, to alienate sections of the people and to adversely affect the harmony amongst different sections of the people, i.e. Hindus and Muslims by using bombs, dynamites, hand grenades and other explosive substances like RDX or inflammable substances or fire-arms like AK-56 rifles, carbines, pistols and other lethal weapons, in such a manner as to cause or as likely to cause death of or injuries to any person or persons, loss of or damage to and disruption of supplies of services essential to the life of the community, and to achieve the objectives of the conspiracy, you all agreed to smuggle fire-arms, ammunitions, detonators, hand grenades and high explosives like RDX into India and to distribute the same amongst yourselves and your men of confidence for the purpose of committing terrorist acts and for the said purpose to conceal and store all these arms, ammunitions and explosives at such safe places and amongst yourselves and with your men of confidence till its use for committing terrorist acts and achieving the objects of criminal conspiracy and to dispose off the same as need arises. To organize training camps in Pakistan and in India to import and undergo weapons training in handling of arms, ammunitions and explosives to commit terrorist acts. To harbour and conceal terrorists/co-conspirators, and also to aid, abet and knowingly facilitate the terrorist acts and/or any act preparatory to the commission of terrorist acts and to render any assistance financial or otherwise for accomplishing the object of the conspiracy to commit terrorist acts, to do and commit any other illegal acts as were necessary for achieving the aforesaid objectives of the criminal conspiracy and that on 12.03.1993 were successful in causing bomb explosions at Stock Exchange Building, Air India Building, Hotel Sea Rock at Bandra, Hotel Centaur at Juhu, Hotel Centaur at Santacruz, Zaveri Bazaar, Katha Bazaar, Century Bazaar at Worli, Petrol Pump adjoining Shiv Sena Bhavan, Plaza Theatre and in lobbing handgrenades at Macchimar Hindu Colony, Mahim and at Bay-52, Sahar International Airport which left more than 257 persons dead, 713 injured and property worth about Rs.27 crores destroyed, and attempted to cause bomb explosions at Naigaum Cross Road and Dhanji Street, all in the city of Bombay and its suburbs i.e. within Greater Bombay. And thereby committed offences punishable under Section 3(3) of TADA (P) Act, 1987 and Section 120-B of IPC read with Sections 3(2)(i)(ii), 3(3)(4), 5 and 6 of TADA (P) Act, 1987 and read with Sections 302, 307, 326, 324, 427, 435, 436, 201 and 212 of Indian Penal Code and offences under Sections 3 and 7 read with Sections 25 (1A), (1B)(a) of the Arms Act, 1959, Sections 9B (1)(a)(b)(c) of the Explosives Act, 1884, Sections 3, 4(a)(b), 5 and 6 of the Explosive Substances Act,

1908 and Section 4 of the Prevention of Damage to Public Property Act, 1984 and within my cognizance."

In addition to the above-said principal charge of conspiracy, the appellant (A-49) was also charged on the following counts:

At head Secondly; The appellant committed an offence punishable under Section 3(3) of TADA by doing the following overt acts:-

(a) He participated in weapons training at Pakistan;
(b) He attended conspiratorial meetings at the residence of Babloo and Mobina where plans for committing terrorist acts were discussed and chalked out;
(c) He participated in the preparation of vehicle bombs at Al-Hussaini building during the night intervening 11th and 12th of March 1993;

At head Thirdly; The appellant, along with Mohd. Iqbal Mohd. Yusuf Shaikh (A-23), went to the Sahar Airport Flyover bridge on a motorcycle (bearing No. MH-01-C-3910) registered in the name of Ayub Abdul Razak Memon (AA) and lobbed hand grenades at the workers working therein and the aircrafts parked at the Airport and thereby committed an offence punishable under section 3(2)(ii) of TADA read with Section 34 of IPC.

At head Fourthly; By throwing the hand grenades, as mentioned above, with an intention and knowledge to kill the workers, the appellant committed an offence punishable under Section 3(3) of TADA.

At head Fifthly; By throwing the hand grenades which could have caused death of persons working therein, the appellant committed an offence punishable under Section 307 read with Section 34 of IPC.

At head Sixthly; By throwing the hand grenades, as mentioned above, with the knowledge that it could cause damage to properties, the appellant committed an offence punishable under Section 435 read with Sections 511 and 34 of IPC.

At head Seventhly; By throwing the hand grenades with the knowledge and intention that it could cause damage to the public property, the appellant committed an offence punishable under Section 4 of Prevention of Damage to Public Property Act, 1984 read with Sections 511 and 34 of IPC.

At head Eighthly; The appellant was an accessory in causing explosion by explosive substances likely to endanger life and property and thereby committed an offence punishable under Sections 3 and 4 read with Section 6 of the Explosive Substances Act, 1908.

251) The charges mentioned above were proved against the appellant (A-49). The appellant was found guilty on all the aforesaid charges except for charge at head fourthly. The appellant has been convicted and sentenced for the above said charges as under:

Conviction and Sentence

(i) The appellant has been convicted for the offence of conspiracy under Section 3(3) of TADA and Section 120-B of IPC read with the offences described at head firstly and sentenced to RI for life alongwith a fine of Rs. 25,000/-, in default, to further undergo RI for 6 months. (charge firstly)

(ii) The appellant has been convicted for the offence under Section 3(3) of TADA for commission of offences mentioned at head secondly and sentenced to RI for 14 years alongwith a fine of Rs. 75,000/-, in default, to further undergo RI for 1 = (one and a half) years. (charge secondly)
(iii) The appellant has also been convicted for the offence under Section 3(2)(ii) of TADA and sentenced to RI for 14 years along with a fine of Rs. 75,000/-, in default, to further undergo RI for 1 = (one and a half) years. (charge thirdly)
(iv) The appellant has also been convicted for the offence under Section 307 read with Section 34 of IPC and sentenced to RI for 7 years alongwith a fine of Rs. 25,000/-, in default, to further undergo RI for 6 months. (charge fifthly)
(v) The appellant has also been convicted for the offence under Section 435 read with Sections 511 and 34 of IPC and sentenced to RI for 3 = (three and a half) years alongwith a fine of Rs. 25,000/-, in default, to further undergo RI for 6 months. (charge sixthly)
(vi) The appellant has also been convicted for the offence under Section 4 of the Prevention of Damage to Public Property Act, 1984 read with Sections 511 and 34 of IPC and sentenced to RI for 5 years alongwith a fine of Rs. 5,000/-, in default, to further undergo RI for 1 month. (charge seventhly)
(vii) The appellant has also been convicted for the offence under Sections 3 and 4 of the Explosive Substances Act, 1908 and sentenced to RI for 5 years. (charge eighthly)
252) The evidence against the appellant (A-49) is in the form of:-
(i) his own confession;
(ii) confessions made by other co-conspirators; (co-accused);
(iii) testimony of prosecution witnesses; and
(iv) documentary evidence.
Confessional Statement of the appellant Nasim Ashraf Shaikh Ali Barmare (A-49)

253) Confessional statement of the appellant (A-49) under Section 15 of TADA has been recorded on 16.05.1993 (09:30 hrs.) and 18.05.1993 (10:00 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The following facts emerge from the said confessional statement:
(i) The appellant quit his job as a welder after the riots. Atik asked him if he wanted to work in Dubai and introduced him to Jabir (A-93).
(ii) Jabir arranged for his tickets and visa for Dubai and in the morning of 28.01.1993 dropped him at the Airport in a blue Maruti car and handed over the passport and tickets with the instruction that he will get his Visa on arrival at Dubai.
(iii) He travelled to Dubai by Emirates flight and came out of the Airport after taking his Visa and getting clearance. In Dubai, he listened to a tape recorded provoking speech of a Maulana regarding riots in Ayodhya, Surat and Bombay which motivated him to take revenge for the same.
(iv) On 08/09.02.1993, Ayub dropped the appellant, Niyaz and Feroz at Dubai Airport and told them that they were being sent to Pakistan for training of arms and ammunitions and that the said training would be useful at the time of riots and that they will get arms in Bombay.
(v) The appellant and others went to Pakistan by a PIA flight and they came out of the Airport without any clearance.
(vi) He was given a new name as 'Yusuf' in Pakistan. The appellant and others were given training in use of arms and ammunitions.
(vii) Tiger Memon also came to Pakistan during the training. The appellant also got training in preparation of bombs using RDX and exploding the same using aluminium coloured pencil like detonators and in throwing of hand grenades.
(viii) After the training, he alongwith others went back to Dubai on 25.02.1993. In Dubai, they took oath of maintaining secrecy regarding the aforesaid training by putting their hands on holy Quran.
(ix) The appellant then returned back to Bombay alongwith Rafiq, Shahnawaz, Firoz and Abdul.
(x) He attended a meeting on 10.03.1993 in a flat at Bandra, Hill road, where all the co-accused persons who participated in the training were also present.
(xi) On 11.03.1993, PW-2 took him to the Airport flyover and told him that on 12.03.1993, he has to throw handgrenades on the aeroplanes which were parked there. PW-2 carefully explained to him as to from where he

has to come and where he has to go.

(xii) PW-2 then took him to Tiger's residence at Al-Hussaini where he saw that about 20-25 boys had gathered there who had also taken training in Pakistan,.

(xiii) Tiger Memon then told the appellant and Mohammed Iqbal Mohammed Yusuf Shaikh (A-23) to go to Sahar Airport on 12.03.1993 in the afternoon for throwing handgrenades as instructed by PW-2.

(xiv) The appellant, along with others, went to the garage situated behind the Al-Hussaini building and filled RDX mixed with steel scrap in a Maruti car. He, alongwith others, also filled another Maruti vehicle and a scooter with bomb made of RDX.

(xv) On 12.03.1993, in the afternoon, PW-2 gave him 7 handgrenades, one loaded gun and a small plastic bag containing bullets and directed him to go for the mission.

(xvi) The appellant and A-23 went to the Sahar Airport by a red coloured Yamaha motorcycle. The last number of the motorcycle was 3910. At about 15:15 hours, they parked the motorcycle on the flyover bridge and after observing the situation, the appellant pelted a hand grenade towards an Air India aircraft. However, the hand grenade could not reach the plane and it exploded in mid-air.

(xvii) Thereafter, the appellant and A-23 fled away from there and went to Andheri Kurla road near the Church where they parked the motorcycle and went back to their home.

(xviii) On reaching home, the appellant concealed four hand grenades and a pistol and after one/two days of Eid, he gave the said hand grenades to his friend Asif and the pistol and bullets to his friend Ayub in order to keep the same with them.

254) A perusal of the confession of the appellant establishes that he played an active role in the entire conspiracy, viz., participation in the weapons training at Pakistan; participation in the conspiratorial meeting at Mobina's residence where plans were chalked out for committing terrorist acts; active participation in filling explosive substances in vehicles for the purpose of causing explosions in various parts of the Bombay and lobbing handgranades at Sahar Airport.

255) The prosecution highlighted that the appellant (A-49) has made the above confession voluntarily, without any pressure or coercion and the same has been recorded after following all the safeguards prescribed under Section 15 of TADA and the rules framed thereunder. The said facts have been duly established by the recording officer PW-193.

Confessional Statements of co-accused

256) Apart from his own confession, the involvement of the appellant (A-49) is further established by the confessional statements of the following co-accused. The legality and acceptability of the confessions of the co-accused has already been considered by us in the earlier part of our discussion. The said confessions insofar as they refer to the appellant (A-49) are summarized hereinbelow:

Confessional Statement of Bashir Ahmed Usman Gani Khairulla(A-13)

Confessional statement of A-13 under Section 15 of TADA has been recorded on 16.05.1993 (10:30 hrs.) and 18.05.1993 (17:15 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. A brief summary of the confession of A-13 with respect to the appellant is summarised hereinunder:

(i) The appellant was present in the conspiratorial meeting held on 10.03.1993 in a flat on Hill Road, Bandra.

(ii) The appellant was present in the garage when RDX was being loaded in vehicles in the night intervening 11/12.03.1993.

(iii) The appellant was present at Tiger's residence at Al-Hussaini building on 12.03.1993 in the afternoon.

Confessional Statement of Mohd. Farooq Mohd. Yusuf Pawale (A-16)

Confessional statement of A-16 under Section 15 of TADA has been recorded on 20.05.1993 (16:30 hrs.) and 22.05.1993 (16:45 hrs.) by Shri Sanjay Pandey (PW-492), the then DCP, Zone-VIII, Bombay. The confession of A-16 reveals that the appellant attended weapons training at Pakistan where he was given a fake name 'Yusuf'.

Confessional Statement of Mohd. Iqbal Mohd. Yusuf Shaikh (A-23)

Confessional statement of A-23 under Section 15 of TADA has been recorded on 20.05.1993 (10:00 hrs.) and 22.05.1993 (10:00 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. A brief summary of the confession of A-23 with respect to the appellant is summarised hereinunder:

i) The appellant participated in filling of RDX in vehicles at Al-Hussaini building.
ii) On 12.03.1993, Javed Chikna and PW-2 distributed handgrenades to A-23 and the appellant at Al-Hussaini Building and, thereafter, Javed Chikna gave the key of a red coloured Yamaha motorcycle to A-23 and told him to take the appellant to the Airport. Javed Chikna also gave a pistol and bullets to the appellant.
iii) They then went to the flyover bridge near the Airport and on reaching there, the appellant asked A-23 to keep the bike engine on start mode and lobbed the hand grenade towards the aircrafts which resulted into a loud explosion. Thereafter, they fled away from there and went to Andheri-Kurla road where they left the motocycle near the Church and went back to their homes.

Confessional Statement of Shahnawaz Abdul Kadar Qureshi (A-29)

Confessional statement of A-29 under Section 15 of TADA has been recorded on 18.05.1993 (18:30 hrs.) and 21.05.1993 (14:45 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The said confession reveals that the appellant underwent training at Pakistan and he also took oath to commit 'Jehad'.

Confessional Statement of Zakir Hussain Noor Mohd. Shaikh (A-32)

Confessional statement of A-32 under Section 15 of TADA has been recorded on 16.05.1993 (11:25 hrs.) and 19.05.1993 (17:30 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay A brief summary of the confession of A-32 with respect to the appellant is summarised hereinunder:

(i) The appellant attended the conspiratorial meeting at Al-Hussaini building on 10.03.1993.
(ii) The appellant was present at Al-Hussaini building on the night of 11.03.1993.
(iii) On 12.03.1993, PW-2 gave handgrenades to him and Javed Chikna asked them to leave for the mission.

Confessional Statement of Abdul Akhtar Khan (A-36)

Confessional statement of A-36 under Section 15 of TADA has been recorded on 19.05.1993 (17:40 hrs.) and 21.05.1993 (18:20 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. A brief summary of the confession of A-36 with respect to the appellant is summarised hereinunder:

(i) The appellant was present in Pakistan at the time of training and he left on 25.02.1993.
(ii) The appellant was present at Tiger's residence at Al-Hussaini on 11.03.1993. Javed Chikna asked the appellant and A-36 to unload RDX in the garage.
(iii) The appellant was loading RDX into vehicles.

Confessional Statement of Feroz @ Akram Amani Malik (A-39)

Confessional statement of A-39 under Section 15 of TADA has been recorded on 19.04.1993 (22:30 hrs.) and 23.04.1993 (20:50 hrs.) by Mr. P.D. Pawar (PW-185), the then DCP, Zone V, Bombay. A brief summary of the confession of A-39 with respect to the appellant is summarised hereinunder:

(i) The appellant met A-39 in Dubai where he told him that they have to go to Pakistan to take training in arms.
(ii) The appellant was renamed as 'Yusuf' in Pakistan.
(iii) The appellant was present in the meeting at Dubai where all co-trainer boys took oath by swearing on the Quran.

Confessional Statement of Salim Rahim Shaikh (A-52)

Confessional statement of A-52 under Section 15 of TADA has been recorded on 15.04.1993 and 18.04.1993 by Mr. P.D. Pawar (PW-185), the then DCP, Zone V, Bombay. The confession of A-52 reveals that the appellant underwent training at Pakistan. In his confessional statement, the

appellant has also been referred to as 'Yusuf', the name given to him in Pakistan.

Confessional Statement of Nasir Abdul Kadar Kewal @ Nasir Dhakla (A-64)

Confessional statement of A-64 under Section 15 of TADA has been recorded on 22.01.1995 and 24.01.1995 by Shri HC Singh (PW-474), the then Superintendent of Police, CBI/SPE/STF, New Delhi. A brief summary of the confession of A-64 with respect to the appellant is summarised hereinunder:

(i) The appellant was present in Pakistan.
(ii) He attended the meeting on 10.03.1993 at the house of Mobina.
(iii) He was present at Al-Hussaini building on the night of 11.03.1993.
(iv) He assisted in filling RDX in vehicles.

Confessional Statement of Mohd. Rafiq Usman Shaikh (A-94)

Confessional statement of A-94 under Section 15 of TADA has been recorded on 14.05.1993 (18:30 hrs.) and 16.05.1993 by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. A brief summary of the confession of A-94 with respect to the appellant is summarised hereinunder:

(i) The appellant received training in Pakistan.
(ii) He was present in the meeting at Dubai where oath was taken by the trainees by swearing on Quran.

Confessional Statement of Niyaz Mohd. @ Aslam Iqbal Ahmed Shaikh (A-98)

Confessional statement of A-98 under Section 15 of TADA has been recorded on 17.05.1993 (14:30 hrs.) and 20.05.1993 (11:30 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. A brief summary of the confession of A-98 with respect to the appellant is summarised hereinunder:

(i) The appellant was already present in Dubai when A-98 reached there.
(ii) The appellant, alongwith A-39 and A-98, went to Islamabad by a PIA flight.
(iii) The appellant was renamed as 'Yusuf' in Pakistan.
(iv) He left the training camp in Pakistan on 25.02.1993 and went to Islamabad.
(v) He was present at a house in Bandra where the meeting took place among conspirators on 08/09.03.1993.

Confessional Statement of Parvez Mohd. Parvez Zulfikar Qureshi (A-100)

Confessional statement of A-100 under Section 15 of TADA has been recorded on 15.04.1993 (23:30 hrs.) and 17.04.1993 (17:00 hrs.) by Shri Sanjay Pandey (PW-492), the then DCP, Zone-VIII, Bombay. The confession of A-100 reveals that he met the appellant in Pakistan at the time of training and he left the training camp on 25.02.1993.

257) A perusal of the confessional statements of all the above accused, viz., A-13, A-16, A-23, A-29, A-32, A-36, A-39, A-52, A-64, A-94, A-98 and A-100 clearly establish the fact that it corroborate with each other and also with the confessional statement of the appellant (A-49). After consideration of all the abovesaid confessional statements of the co-accused, the involvement of the appellant in the conspiracy is clearly established inasmuch as -

(i) He went to Pakistan and underwent training in arms and ammunitions and explosives;
(ii) After completion of the aforesaid training, he took oath of maintaining secrecy and committing 'Jehad' alongwith other co-accused in Dubai;
(iii) He participated in the conspiratorial meeting held at the residence of Mobina (A-96) where plans for executing the blasts were discussed;
(iv) He actively participated in filling of explosives in vehicles in the night intervening 11/12.03.1993 and
(v) He went alongwith A-23 from Al-Hussaini Building on a red coloured Yamaha motorcycle driven by A-23 to the Sahar Airport Flyover Bridge and pelted handgrenade at the aircraft, and thereafter, fled away and went to Andheri-Kurla road where they left the motocycle near a Church.

Deposition of Prosecution Witnesses

258) Apart from the aforesaid evidence, the involvement and role of the appellant in the conspiracy, as stated above, is also revealed by the

deposition of the following prosecution witnesses:

Deposition of Mohammed Usman Jan Khan (PW-2) (Approver)

The deposition of PW-2 (Approver) reveals that:

(i) He knows the appellant and identified him in the Court.

(ii) The appellant was introduced to PW-2 using a fake name - 'Yusuf' at the training camp in Pakistan.

(iii) On completion of the aforesaid training and after returning to Dubai, PW-2, along with the appellant and others, took oath of maintaining secrecy by swearing on Quran.

(iv) The appellant attended the meetings at Shakil's residence on 07.03.1993 and 10.03.1993.

(v) The appellant was present in the garage at Al-Hussaini building on the night of 11.03.1993 and filled RDX in vehicles.

(vi) Javed Chikna told the appellant to remove AK-56 rifles and handgrenades from the gunny bag kept in the said Maruti van to the Tiger's flat on the fifth floor.

(vii) On 12.03.1993, Javed Chikna gave 4 hand grenades each to the appellant and A-23 and told them to go to Sahar Airport in order to throw the same.

The above deposition of the approver duly corroborates with the confessional statement of the appellant as well as with the confessions made by co-accused persons that the appellant participated in the weapons training at Pakistan and after completion of the said training, took oath of maintaining secrecy and committing Jehad alongwith other co-accused. It further corroborates with the fact that the appellant participated in the conspiratorial meetings and went alongwith A-23 to Sahar Airport in order to throw hand grenades.

Deposition of Guruprasad Shrikrishna (PW-7)

PW-7, an eyewitness to the explosion at Sahar Airport reveals the following:

(i) He was working as a painter in Bombay. On 12.03.1993, he was painting the parapet wall of the Sahar Airport flyover bridge.

(ii) Around 3 to 3.30 p.m., he heard a screeching sound on the fly-over bridge as if somebody had applied sudden brakes. He saw two persons on a red motor-cycle which stopped on the bridge. They went towards the parapet wall and came back to the motor-cycle. The person sitting on the pillion seat again went towards the wall, took out a round object from his pocket and threw it towards the aeroplane which resulted in a big explosion. Then they went away from there on the motor-cycle and PW-7 saw the number of motor cycle as 3910.

(iii) He identified the red motor cycle at MIDC police station.

(iv) He identified the appellant in the Test Identification Parade ('TIP') dated 09.04.1993 conducted by PW-462.

(v) He also identified the appellant in the TIP dated 12.05.1993 conducted by PW-469.

Deposition of Subhash Triveni Harijan (PW-14)

PW-14, who was also an eye-witness to the incident, deposed on 08.11.1995, which reveals the following:

(i) At the relevant time, i.e., in March 1993, he was employed as a painter. He knew PW-7 as he worked alongwith him. On 12.03.1993, he alongwith PW-7 and others was working on the Eastern flyover bridge.

(ii) Around 3 p.m., he heard a screeching sound on the flyover bridge as if somebody had applied sudden brakes. He saw two persons on a red motor-cycle which stopped on the bridge. The person sitting on the pillion seat went towards the parapet wall and then took out a round object from his pocket and threw it towards the aeroplane which resulted in a big explosion. Then they went away from there on the motor-cycle and PW-14 noticed the number of motor cycle as 3910.

(iii) He left for his native village on the same day as he got scared after seeing the explosion. He came back after 15-20 days and went to Sahar police station.

(iv) He identified the appellant in Court. He identified A-23 also in Court.

(v) He identified the red motor cycle at MIDC police station.

(vi) He identified the appellant in the TIP conducted by PW-469 on 12.05.1993.

Deposition of Vasant Laxman Jadhav (PW-484)

PW-484, in his deposition dated 22.06.1999 reveals as under:

(i) PW-484 had worked in the Ministry of Civil Aviation and was the then in-charge of the Bomb Detection and Disposal Squad. He is an expert in explosive substances.

(ii) On 12.03.1993, he had inspected the site of the explosion at bay 54 and collected the samples of steel balls from the site.

(iii) He, thereafter, forwarded the said steel balls and soil collected from the blast site to the Forensic Science Laboratory ('FSL'). FSL report dated 19.03.1993 confirmed traces of Nitrite.

(iv) The delay in sending the samples to FSL (collected on 12.03.1993 and sent to FSL on 15.03.1993) was because his Squad was very busy with investigating bomb explosions across the Bombay.

Deposition of Siddique Babubhai Shaikh (PW-315)

Deposition of PW-315, who was the API at Sahar Airport police station in 1993 dated 20.04.1998 reveals as under:

(i) On 12.03.1993, at 16:45 hours, he received a call from the Senior Airport Manager regarding the said explosion pursuant to which, he rushed to the spot at Bay 54.

(ii) He then made a spot Panchnama in the presence of panch witnesses which is marked as Exhibit 1196.

(iii) After returning to the Sahar Airport Police Station from the spot of explosion, he duly made an entry in the Station Diary about the events that took place therein.

(iv) On 29.03.1993, after receipt of the CA report in respect of iron balls collected by PW-484 from the blast site, he went through the same and ascertained that the said iron balls were the part of the hand grenade, and thereafter, he lodged the FIR which is marked as Exhibit 1197 and 1197(a).

Deposition of Rajaram Bhikaji Dhadave (PW-301)

At the relevant time, PW-301 was the Watchman of St. John's School, Marol, Andheri. In his deposition dated 23.03.1998, he reveals as under:

(i) On 13.03.1993, he saw an abandoned red Yamaha motor cycle by the side of church in the school premises.

(ii) On 16.03.1993, the Principal of the School informed the police about the said motor cycle. The Police took charge of the said motorcycle on 16.03.1993.

Deposition of Hemant Motiram Mankar (PW-599)

PW-599, who was the PSI attached with MIDC Police Station in 1993, in his deposition dated 08.03.2000 reveals as under:

(i) On 16.03.1993, he got a call from Shri Kuria, Principal of St. John's School, Marol, Andheri, regarding an abandoned motor-cycle near the church within the school premises. He then deputed two Constables who brought the said red motor-cycle bearing Registration No. MH-01-C-3910 to the police station.

(ii) He, thereafter, spoke to RTO, Tardeo about the above motor-cycle and also registered the motor cycle in muddemal register.

(iii) He identified the aforesaid motor cycle in Court.

Deposition of Manohar Uttamrao Dalvi (PW-504)

Deposition of PW-504 dated 09.09.1999 reveals that:

(i) He was a Police Inspector at the Sahar Airport Police Station in 1993;

(ii) On 29.03.1993, PW-315 lodged an FIR with the Sahar Airport police station which was recorded by API Hasabnis and, subsequently, the investigation of the said crime was entrusted to PW-504;

(iii) On 01.04.1993, he recorded the statements of eyewitnesses, namely, PW-7 and PW-14 and got to know about the motorcycle bearing registration no. MH-01-C-3910 which was used by the appellant;

(iv) On 04.04.1993, PW-504 wrote a letter to the R.T.O., Tardeo, for further information about the aforesaid motorcycle. The said letter is marked as Exhibit 1750. On 05.04.1993, he also informed the nearby Police Stations to be on the lookout for the aforesaid motorcycle;

(v) PW-504 received telephonic information from MIDC Police Station that one unclaimed motorcycle was found near Church High School.

(vi) He then took PWs 7 and 14 to MIDC Police Station on 06.04.1993, where they identified the said motorcycle;

(vii) On 16.04.1993, he was informed by the Mahim police Station that the appellant had been arrested in connection with another case;

(viii) On 11.05.1993, PW-504 obtained the custody of the appellant and arrested him;

(ix) He decided to conduct an identification parade for the appellant and A-23 and for the said purpose, he wrote a request letter dated 11.05.1993 to PW-469. Accordingly, a TIP was conducted by PW-469 on 12.05.1993;

(x) When the appellant expressed his desire to make a voluntary confession, PW-504 wrote a letter dated 15.05.1993 to Shri Krishan Lal Bishnoi (PW-193) requesting him to record the confession of the appellant;

(xi) On 16.05.1993, the appellant was produced before PW-193 for recording his confession.

It is pertinent to mention here that pursuant to recording of the statements of eyewitnesses, viz., PW-7 and PW-14, when PW-504 got to know about the red Yamaha motorcycle bearing registration no. MH-01-C-3910 which was used by the appellant, he had written a letter on 04.04.1993 to R.T.O., Tardeo, for further information about the said vehicle. In response to the above letter, Bhargavram Bhalchandra Phalke (PW-314), the then Deputy Transport Commissioner, R.T.O., Tardeo, sent a letter dated 03.05.1993 which shows the registration of the said motor cycle in the name of Ayub Abdul Razak Memon (AA), brother of Tiger Memon. The above fact is also clearly evident from para 5 of the deposition of PW-314.

Deposition of Vasant Ganpat Kamble (PW-462)

Deposition of PW-462 dated 07.12.1998 reveals that:

(i) He was the Special Executive Magistrate who had conducted the TIP on 09.04.1993. He had received a memo from Worli Police Station on 08.04.1993 for conducting the aforesaid TIP.

(ii) He got the panch witnesses on 09.04.1993 for the aforesaid TIP.

(iii) He remembered the appellant as Barmare as one of the accused on 09.04.1993.

(iv) He remembered the names of identifying witnesses; one of them was PW-7.

(v) PW-7 identified the appellant as the person who was sitting on the rear side of the motorcycle that had stopped at Sahar Airport Fly-over bridge and the one who then threw a handgrenade towards the aircraft.

(vi) He prepared the Memorandum Panchnama Exhibit 1479.

Deposition of Ashok Sakharam Budhavale (PW-614)

At the relevant time, i.e., in the year 1993, PW-614 was the API at Worli Police Station. In his deposition dated 28.03.2000, he reveals as under:

(i) On 09.04.1993, he was told that the TIP in respect of the appellant was to be conducted at around 2.00 pm at Sacred Hearts School by PW-462.

(ii) Accordingly, PW-462 conducted the TIP while PW-614 went outside the school and after two hours (around 04:30 pm) a memorandum of parade drawn by PW-462 was given to PW 614.

(iii) He does not remember making an entry into the station diary for taking the appellant for TIP on 09.04.1993. PW-614 took the appellant without any other officer for TIP but he went alongwith three constables whose names he does not remember.

Deposition of Moreshwar Gopal Thakur (PW-469)

Deposition of PW-469 dated 01.02.1999 reveals as under:

(i) He was the SEM who conducted the TIP on 12.05.1993 in respect of the appellant. A Constable from Sahar police station came to him on 11.05.1993 on the instructions of Dalvi (PW-504) and gave him a request letter for conducting the said TIP and he agreed to conduct the TIP on 12.05.1993.

(ii) He asked Dalvi (PW-504) to bring two panch witnesses and ten dummies.

(iii) PW-504 went out of the parade room prior to the commencement of the TIP. Both the accused declined to change their clothes prior to the TIP.

(iv) 3 witnesses identified both the suspects at the TIP.

(v) PW-469, thereafter, handed over the custody of accused to PW-504 and prepared a memorandum panchnama (marked as 'X-550'), which was signed by two panchas.

(vi) PW-469 does not remember the names of accused persons, panchas or three witnesses.

(vii) Memorandum Panchnama (Exhibit 1506) was prepared by PW-469.

The above depositions of PW-462 and PW-469 clearly prove that the TIP dated 09.04.1993 and 12.05.1993 were duly and properly conducted by them and also prove that the appellant was duly identified by PW-7 and PW-14 as

the person who was sitting on the rear side of the motorcycle that had stopped on the Sahar Airport Fly-over bridge on 12.03.1993 and the one who then threw a handgrenade towards the aircraft. Further, no discrepancy has been brought out in their cross-examinations.

Deposition of R.A. Sawant (PW-584)

Deposition of PW-584 proves the departure of the appellant to Dubai on 28.01.1993 from Bombay. The relevant endorsements on the Embarkation Card (X-661) concerning the departure which was duly stamped by him have been marked as Exhibit Nos. 2016 and 2017 (Box 21).

Deposition of S.K. Borse (PW-217)

The arrival of the appellant to Bombay on 02.03.1993 from Dubai has been proved by PW-217. The relevant endorsements on the Disembarkation Card (X-319) concerning the arrival have been marked as Exh. Nos. 970 and 970-A colly.

259) A perusal of the aforesaid depositions establish that on 12.03.1993, they were present at the Sahar Airport Fly-over bridge when the said explosion took place and that they both came on a red motor-cycle and the appellant threw a round object towards the aeroplane which resulted in a big explosion. It is further proved that PW-14 duly identified both the persons on the motor-cycle i.e. the appellant and A-23 in court. Further, PW-7 and PW-14 duly identified the appellant and A-23 during the Test Identification Parade.

260) Ms. Farhana Shah, learned counsel for the appellant contended that para 19 of the deposition of PW-7 reveals that two persons identified by him in the TIP were dissimilar in their appearance and that the Criminal Manual requires that in an identification parade, the accused should be placed with his dummies similar to his appearance. With respect to this contention, it is submitted that the deposition of PW-469, the Special Executive Magistrate who conducted the said TIP, does not reveal any material extracted during the cross-examination or otherwise for coming to the conclusion that the dummies selected were of dissimilar appearance. A careful perusal of the evidence of PW-469 and the Memorandum Exh.1506, in fact, reveals that two suspects were put for the parade alongwith about 10 dummies. The reference to the Memorandum also reveals that PW-469 had selected 10 persons of similar appearances with the suspects out of 25 dummies brought by the police. Further, para-26 of his deposition reveals that though his evidence is silent regarding the selection of the dummies, he had asked the police to send 10 dummies and two panchas to the parade room. Thus, in view of this, it is proved that the prosecution has adduced sufficient evidence regarding the dummies selected being of similar appearance with the suspects put in the parade.

261) In the light of the above evidence, it is established that the appellant had thrown hand grenade towards the aircraft thereby causing explosion and consequent damage. The appellant was completely aware of his acts and he had full knowledge that the act committed by him at Sahar Airport Flyover Bridge was likely to result in the death of persons present in the aircraft.

Sentence

262) The appellant was given full opportunity to defend himself on the question of quantum of sentence. His statement was recorded on 26.09.2006 in which he prayed that the following factors, amongst others, may be considered while determining his sentence:

(i) He has been in custody since his arrest in April 1993;
(ii) His children and family members are dependent on him;
(iii) His mother has been ill since 2000; and
(iv) He is innocent. He has also expressed an apology.

263) In our considered view, the appellant was a coveted member of the conspiracy and was indulged in the acts furthering the object of the conspiracy. It is proved beyond doubt that the appellant was in the conspiracy until the final date of achievement of the object of conspiracy. There is no valid ground for interference in the conviction and sentence. Consequently, the appeals fail and are liable to be dismissed.

Criminal Appeal Nos. 633 of 2008

Bashir Ahmed Usman Gani Khairulla (A-13) ... Appellant(s)

Versus

The State of Maharashtra,

through CBI-STF, Mumbai ... Respondent(s)

264) Mr. Aabad Ponda, learned counsel for the appellant (A-13) and Mr. Mukul Gupta, learned senior counsel duly assisted by Mr. Satyakam, learned counsel for the respondent (CBI).

265) The instant appeal is directed against the final judgment and order of conviction and sentence dated 04.12.2006 and 20.07.2007 respectively whereby the appellant (A-13) has been convicted and sentenced to rigorous imprisonment (RI) for life by the Designated Court under TADA for the Bombay Bomb Blast Case, Greater Bombay in B.B.C. No.1/1993.

Charges:

266) A common charge of conspiracy was framed against all the co-conspirators including the appellant. The relevant portion of the said charge is reproduced hereunder:

> "During the period from December, 1992 to April, 1993 at various places in Bombay, District Raigad and District Thane in India and outside India in Dubai (U.A.E.) and Pakistan, entered into a criminal conspiracy and/or were members of the said criminal conspiracy whose object was to commit terrorist acts in India and that you all agreed to commit following illegal acts, namely, to commit terrorist acts with an intent to overawe the Government as by law established, to strike terror in the people, to alienate sections of the people and to adversely affect the harmony amongst different sections of the people, i.e. Hindus and Muslims by using bombs, dynamites, hand grenades and other explosive substances like RDX or inflammable substances or fire-arms like AK-56 rifles, carbines, pistols and other lethal weapons, in such a manner as to cause or as likely to cause death of or injuries to any person or persons, loss of or damage to and disruption of supplies of services essential to the life of the community, and to achieve the objectives of the conspiracy, you all agreed to smuggle fire-arms, ammunitions, detonators, hand grenades and high explosives like RDX into India and to distribute the same amongst yourselves and your men of confidence for the purpose of committing terrorist acts and for the said purpose to conceal and store all these arms, ammunitions and explosives at such safe places and amongst yourselves and with your men of confidence till its use for committing terrorist acts and achieving the objects of criminal conspiracy and to dispose off the same as need arises. To organize training camps in Pakistan and in India to import and undergo weapons training in handling of arms, ammunitions and explosives to commit terrorist acts. To harbour and conceal terrorists/co-conspirators, and also to aid, abet and knowingly facilitate the terrorist acts and/or any act preparatory to the commission of terrorist acts and to render any assistance financial or otherwise for accomplishing the object of the conspiracy to commit terrorist acts, to do and commit any other illegal acts as were necessary for achieving the aforesaid objectives of the criminal conspiracy and that on 12.03.1993 were successful in causing bomb explosions at Stock Exchange Building, Air India Building, Hotel Sea Rock at Bandra, Hotel Centaur at Juhu, Hotel Centaur at Santacruz, Zaveri Bazaar, Katha Bazaar, Century Bazaar at Worli, Petrol Pump adjoining Shiv Sena Bhavan, Plaza Theatre and in lobbing handgrenades at Macchimar Hindu Colony, Mahim and at Bay-52, Sahar International Airport which left more than 257 persons dead, 713 injured and property worth about Rs.27 crores destroyed, and attempted to cause bomb explosions at Naigaum Cross Road and Dhanji Street, all in the city of Bombay and its suburbs i.e. within Greater Bombay. And thereby committed offences punishable under Section 3(3) of TADA (P) Act, 1987 and Section 120-B of IPC read with Sections 3(2)(i)(ii), 3(3)(4), 5 and 6 of TADA (P) Act, 1987 and read with Sections 302, 307, 326, 324, 427, 435, 436, 201 and 212 of Indian Penal Code and offences under Sections 3 and 7 read with Sections 25 (1A), (1B)(a) of the Arms Act, 1959, Sections 9B (1)(a)(b)(c) of the Explosives Act, 1884, Sections 3, 4(a)(b), 5 and 6 of the Explosive Substances Act, 1908 and Section 4 of the Prevention of Damage to Public Property Act, 1984 and within my cognizance."

In addition to the above-said principal charge of conspiracy, the appellant was also charged on the following counts:

At head Secondly: The appellant committed an offence punishable under section 3(3) of TADA by committing the following overt acts:

(a) He received training in handling of arms, ammunitions and explosives at Borghat and Sandheri;

(b) He attended conspiratorial meetings at the residence of Babloo @ Nazir Ahmed Anwar Shaikh and Mobina @ Baya Musa Biwandiwala (A-96) where plans for committing terrorist acts were discussed and chalked out;
(c) He participated in filling of explosives in various vehicles like RDX fitted with time device detonators during preparation of vehicle bombs in the intervening night of 11/12th March, 1993.

At head Thirdly: The appellant, along with other co-accused persons, in pursuance of the aforesaid criminal conspiracy and being a member of the unlawful assembly, went to Fishermen's Colony at Mahim on 12.03.1993 at about 1.45 pm in a Maruti Van being No. MP-13-D-385 and lobbed hand grenades on the hutments causing death of 3 persons, injuring 6 persons and causing loss of property worth Rs. 50,000/- and thereby committed an offence punishable under section 3(3) of TADA read with Section 149 IPC.

At head Fourthly: The appellant, by doing the aforesaid act, committed an offence punishable under Section 148 IPC.

At head Fifthly: The appellant, by doing the aforesaid act, which resulted into death of 3 persons, committed an offence punishable under Section 302 read with Section 149 IPC.

At head Sixthly: The appellant, by doing the aforesaid act which resulted into injuries to 6 persons, committed an offence punishable under Section 307 read with Section 149 IPC.

At head Seventhly: The appellant, by doing the aforesaid act which resulted into death of 3 persons, injuries to 6 others and loss of property worth Rs.50,000/- committed an offence punishable under Section 324 read with Section 149 IPC.

At head Eighthly: The appellant, by doing the aforesaid act which resulted into loss of property worth Rs.50,000/- committed an offence punishable under Section 436 read with Section 149 IPC.

267) The charges mentioned above were proved against the appellant (A-13). The appellant has been convicted and sentenced for the above said charges as under:

Conviction and Sentence:

(i) The appellant has been convicted for the offence of conspiracy read with the offences described at head firstly and sentenced to RI for life along with a fine of Rs. 25,000/-, in default, to further undergo RI for 6 months. (charge firstly)

ii) The appellant has also been convicted under Section 3(3) of TADA and has been sentenced to RI for 14 years along with a fine of Rs. 75,000/-, in default, to further undergo RI for 1 = (one and a half) years. (charge secondly)

(iii) The appellant has also been convicted under Section 3(3) of TADA and has been sentenced to RI for life along with a fine of Rs.25,000/-, in default, to further undergo RI for a period of 6 months. (charge thirdly)

(iv) The appellant has also been convicted under Section 148 of IPC and has been sentenced to RI for 3 years along with a fine of Rs.25,000/-,

in default, to further undergo RI for a period of 6 months. (charge fourthly)

(v) The appellant has also been convicted under Section 302 read with Section 149 of IPC and has been sentenced to RI for life along with a fine of Rs. 25,000/-, in default, to further undergo RI for a period of 6 months. (charge fifthly)

(vi) The appellant has also been convicted under Section 307 read with Section 149 of IPC and has been sentenced to RI for 10 years along with a fine of Rs. 50,000/-, in default, to further undergo RI for a period of 1 year. (charge sixthly)

(vii) The appellant has also been convicted under Section 324 read with Section 149 of IPC and has been sentenced to RI for 3 years. (charge seventhly)

(viii) The appellant has also been convicted under Section 436 read with Section 149 of IPC and has been sentenced to RI for 10 years along with a fine of Rs. 25,000/-, in default, to further undergo RI for a period of 6 months. (charge eighthly)

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Evidence

268) The evidence against the appellant (A-13) is in the form of:-

(i) his own confession;

(ii) confessions made by other co-conspirators; (co-accused);

(iii) testimony of prosecution witnesses; and

(iv) documentary evidence.

Confesssional Statement of Bashir Ahmed Usman Gani Khairulla (A-13)

269) The involvement of A-13 in the conspiracy is evident from his own confession under Section 15 of TADA recorded on 16.05.1993 (10:30 hrs.) and 18.05.1993 (17:15 hours) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. His confession reveals as under:-

(i) At the relevant time, he was aged about 21 years, residing at Mahim and was an Electrician. He studied upto class IX.

(ii) He knows Javed Chikna (AA) who was residing next to his house for the last three years.

(iii) On 07/08.03.1993, the appellant met Javed Chikna who told him that Hindus have bothered Muslims in riots so they will combat 'Jehad' against Hindus and for this they will impart him training to fire rounds of pistols and lobbying of bombs. Javed Chikna also told the appellant that for this they have to go out of India and asked him to be ready for travel.

(iv) On the very same day, i.e., 07/08.03.1993, Javed Chikna came to the residence of the appellant on a scooter at 9' o clock and told that he has to go along with PW-2 for some work. The appellant accompanied Usman (PW-2) on his scooter who took him to a building at Hill road at the back side of Bhabha Hospital, wherefrom, they went to a flat on the 7th floor where Tiger Memon and other co-accused were also present. The appellant knew all of them as they were friends of Javed Chikna.

(v) The appellant along with other co-accused took oath in the name of 'Quran' that they will do Jehad and will not disclose anything to others.

(vi) Thereafter, Tiger Memon asked the appellant, Mohammad, Iqbal and Moin to go to Bandra Masjid in order to offer Namaz and informed that from there his men will take them for the next job.

(vii) As per the instructions, Abdul Gani Ismail Turk (A-11) came to Bandra Masjid in a Jeep and picked them up.

(viii) On reaching the Hill, the appellant was asked by A-11 to clean the gun and he did the same.

(ix) The appellant along with others took training in throwing of hand grenades and firing of guns.

(x) When the appellant got scared, Tiger got angry with him and asked him to do practice by throwing stones which he did.

(xi) After the training, they came back to Bombay. The appellant was dropped by Gani at Mahim Dargah by the side of Bharat Motor Training School.

(xiii) On the night intervening 11/12.03.1993, the appellant went to the house of Tiger Memon. Thereafter, he along with others went to

the garage where he noticed 10-12 gunny bags and boxes filled with black chemical. He also saw co-accused persons loading articles in jeep. He also informed that "Tiger Memon admired 'our' work" and then left at around 3.30 am".

(xiv) On 12.03.1993, at 12.45 p.m., he went to Al-Hussaini building along with Zakir who came to pick him up.

(xv) On 12.03.1993, the appellant was given Rs.5,000/- by Javed Chikna and he told him to accompany Salim, Zakir, Mehmood, Moin and Abdul Akhtar in order to throw bombs at Mahim causeway.

(xvi) He went to Mahim along with other co-accused in a dark blue Maruti Van with registration number of Madhya Pradesh and on the way, they took Firoz and went towards the Basti.

(xvii) On reaching there, the appellant, Zakir, Abdul, Akhtar, Mahmood, Moin and Firoz got down and hurled bombs. The appellant could not open his bomb and put it back in the bag. He could not get into the escaping car and thus he ran away and got into a bus to Bhendi Bazaar.

270) On perusal of the above confession of the appellant the following facts emerge -

(i) the appellant knowingly and consciously committed the following overt acts, viz., he agreed to take revenge against Hindus and also took oath to do 'Jehad' and keep the identity of other co-accused undisclosed;

(ii) He took training in handling arms and throwing hand grenades at Sandheri;

(iii) He attended conspiratorial meetings on 7th March and 10th March, 1993;

(iv) He practiced by throwing stones in order to gain perfection in throwing of bombs;

(v) He filled black chemical which fact is clearly established from his own confession that "Tiger Memon complemented us for 'our' work" and he went to Mahim Causeway and made every possible efforts to lob hand grenades at the basti.

271) Apart from the above facts, on perusal of his entire confession we are also satisfied that the appellant has made the above confession voluntarily, without any pressure or coercion and the same has been recorded after following all the safeguards enumerated under Section 15 of TADA and the rules framed thereunder. The recording officer has proved that confession was given voluntarily and without any force, coercion or allurement.

Confessional Statements of co-accused:

272) The prosecution pointed out that the involvement of the appellant in committing overt acts, as stated above, is further revealed in the confessional statements of the other co-accused persons which are summarized as under:

Confessional Statement of Abdul Gani Ismail Turk (A-11)

Confessional statement of A-11 under Section 15 of TADA has been recorded on 15.04.1993 (22:35 hrs.) and 18.04.1993 (01:15 hrs.) by Shri Prem Krishna Jain (PW-189), the then DCP, Zone X, Bombay. The confession of A-11 corroborates with the confessional statement of the appellant that he was present at Bandra Masjid from where he was picked up and went to a hill where they took training in throwing of bombs.

Confessional Statement of Parvez Nazir Ahmed Shaikh (A-12)

Confessional statement of A-12 under Section 15 of TADA has been recorded on 18.04.1993 (14:00 hrs.) and 21.04.1993 (06:50 hrs.) by Shri Prem Krishna Jain (PW-189), the then DCP, Zone-X, Bombay. The confession of A-12 corroborates with the confession of the appellant that he was present inside the garage at the time when black chemical was being loaded in the vehicles.

Confessional Statement of Mohd. Iqbal Mohd. Yusuf Shaikh (A-23)

Confessional statement of A-23 under Section 15 of TADA has been recorded on 20.05.1993 (10:00 hrs.) and 22.05.1993 (10:00 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The confession of A-23 with reference to the appellant is summarised hereunder:

(i) The appellant attended conspiratorial meeting in a flat behind Bhabha Hospital.

(ii) The appellant, along with others, took oath by placing their hands on

Quran that they will do Jehad in order to take revenge.

(iii) The appellant, along with other co-accused, went to Bandra as instructed by Tiger, from where, they were picked up and went to a hill and were imparted training in throwing of bombs and practice in firing.

(iv) The appellant attended meeting at a flat in Bandra where Tiger Memon gave Rs. 5,000/- to each of them.

(v) The appellant was present at Al-Hussaini building on 12.03.1993.

Confessional Statement of Zakir Hussain Noor Mohd. Shaikh (A-32)

Confessional statement of A-32 under Section 15 of TADA has been recorded on 16.05.1993 (11:25 hrs.) and 19.05.1993 (17:30 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The confession of A-32 reveals the following facts:

(i) The appellant attended conspiratorial meeting on 10.03.1993 in a flat at Mahim and he was in one group along with Salim, Feroz, Moin and Iqbal.

(ii) The appellant went to Al-Hussaini Building on 12.03.1993 around 12.45 pm along with Zakir who came to pick him up.

(iii) The appellant along with other co-accused received Rs.5,000/- from Javed Chikna.

(iv) The appellant, along with other co-accused, went in a blue coloured Maruti car loaded with hand grenades and they also picked up Feroz on the way to Dargah.

(v) At Mahim, all of them got down except Salim and threw hand grenades.

(vi) The appellant was left behind i.e., he could not get into the escaping car.

Confessional Statement of Abdul Akhtar Khan (A-36)

Confessional statement of A-36 under Section 15 of TADA has been recorded on 19.05.1993 (17:40 hrs.) and 21.05.1993 (18:20 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The confession of A-36 corroborates with the confessional statement of the appellant that he along with other co-accused went to Machhimar Colony at Mahim in a blue coloured Maruti Van and all of them got down and lobbed hand grenades and during escape the appellant was left behind.

Confessional Statement of Feroz @ Akram Amani Malik (A-39)

Confessional statement of A-39 under Section 15 of TADA has been recorded on 19.04.1993 (22:30 hrs.) and 23.04.1993 (20:50 hrs.) by Shri P.D. Pawar (PW-185), the then DCP, Zone V, Bombay. The said confession reveals the following facts qua the appellant:

(i) On 07.03.1993, in the evening, the appellant and PW-2 came to the house of A-39 and took him to a building where a meeting was held.

(ii) The appellant along with other co-accused went to Machhimar Colony in a grey coloured Maruti Van and all of them except Salim got down and lobbed hand grenades and after lobbing, he (A-13) was left behind.

Confessional Statement of Nasir Abdul Kadar Kewal @ Nasir Dhakla (A-64)

Confessional statement of A-64 under Section 15 of TADA has been recorded on 22.01.1995 and 24.01.1995 by Shri H.C. Singh (PW-474), the then Superintendent of Police, CBI/SPE/STF, New Delhi. The confession of A-64 corroborates with the confession of the appellant and it reveals that the appellant was present in the flat at Al-Hussaini building on the night intervening 11/12.03.1993.

Confessional Statement of Salim Rahim Shaikh (A-52)

Confessional statement of A-52 under Section 15 of TADA has been recorded on 15.04.1993 and 18.04.1993 by Mr. P.D. Pawar (PW-185), the then DCP, Zone V, Bombay. The confession of A-52 corroborates with the confession of the appellant. The said confession reveals that the appellant attended conspiratorial meeting at the residence of Babloo when Tiger Memon assigned the appellant to the group of A-32, A-43 and other co-accused and the appellant was present at Al-Hussaini building in the night intervening 11/12.03.1993.

Confessional Statement of Shaikh Ali Shaikh Umar (A-57)

Confessional statement of A-57 under Section 15 of TADA has been recorded on 19.04.1993 (12:00 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The confession of A-57 corroborates with the confession of the appellant. The said confession reveals that the

appellant was a friend of Javed Chikna.

Confessional Statement of Mohd. Parvez Zulfikar Qureshi (A-100)

Confessional statement of A-100 under Section 15 of TADA has been recorded on 15.04.1993 (23:30 hrs.) and 17.04.1993 (17:00 hrs.) by Shri Sanjay Pandey (PW-492), the then DCP, Zone-VIII, Bombay. The said confession reveals the following about the appellant:

(i) He was present at Al-Hussaini building in the night intervening 11/12.03.1993.

(ii) He was present along with others in the Maruti Car driven by Salim.

273) A perusal of the confessional statements of all the above accused, viz., A-11, A-12, A-23, A-32, A-36, A-39, A-64, A-52, A-57 and A-100 clearly establish that the appellant committed the following overt acts:

(i) He was a friend of notorious goon 'Javed Chikna' who was a close associate of Tiger Memon.

(ii) He attended both the conspiratorial meetings;

(iii) He took oath to take revenge against Hindus and not to disclose anything to anyone;

(iv) He received training in throwing of bombs and use of arms;

(v) He was present at Al-Hussaini building in the night intervening 11/12.03.1993 and participated in filling of RDX in vehicles;

(vi) He received Rs. 5,000/- from Tiger Memon and Javed Chikna;

(vii) He alongwith other co-accused traveled in a blue coloured Maruti Van to Fishermen's Colony at Mahim where they lobbed hand grenades.

274) It is contended by Mr. Aabad Ponda on behalf of the appellant that since he has subsequently retracted his confession on 12.01.1994, the same should not be relied upon. It is further contended that the co-accused have also subsequently retracted and, hence, it would not be safe to base conviction on the said confessions. This aspect has been elaborately considered and rejected in the earlier appeals, we are not once again assessing the same.

Deposition of Prosecution Witnesses:

275) Apart from the aforesaid evidence, the involvement and the role of the appellant in the conspiracy as stated above is disclosed by the deposition of various prosecution witnesses which are as under:

Deposition of Mohd. Usman Jan Khan (PW-2)

The relevant material in his evidence is as follows:-

(i) PW-2 deposed that he knows the appellant as Bashir Electrician.

(ii) PW-2 identified the appellant before the court during dock proceedings.

(iii) PW-2 deposed that the appellant attended a meeting at the residence of Shakil on 07.03.1993.

(iv) PW-2 deposed that the appellant also attended a meeting at the residence of Shakil on 10.03.1993.

(v) PW-2 deposed that the appellant went for a survey of Bharat Petrolium Refinery at Chembur on 11.03.1993.

(vi) PW-2 deposed that the appellant was present at Al-Hussaini building on the night of 11.03.1993.

(vii) PW-2 deposed that the appellant was given hand grenades by Javed Chikna and he was told to throw them at Fishermen's Colony at Mahim on 12.03.1993.

Deposition of Laxman Patil (PW-5)

PW-5 is the resident of the Fishermen's Colony and had witnessed the incident and summarized the same as under:

(i) He deposed that while he was waiting on the road, he saw the appellant and others throwing hand grenades towards the colony.

(ii) He identified the appellant in Court.

(iii) He identified the appellant in TIP dated 15.05.1993 conducted by Special Executive Magistrate, Moreshwar Thakur (PW-469) at Mahim Police Station.

(iv) He also identified the vehicle No. MP-13-D-385 as the car in which the appellant and others came to Mahim slope in order to throw hand grenades.

Deposition of Santosh Patil (PW-6)

PW-6 is a resident of Mahim Fishermen's Colony at Mahim. He deposed

that he witnessed the incident while he was waiting near the Municipal School at Mahim slope.

(i) He identified the appellant in Court.

(ii) He identified the appellant in TIP dated 15.05.1993 conducted by Special Executive Magistrate, Moreshwar Thakur (PW-469) at Mahim Police Station.

(iii) He also identified the vehicle No. MP-13-D-385 as the car in which the appellant and others came to Mahim slope in order to throw hand grenades.

Deposition of Shashikant Shetty (PW-13)

PW-13 is a resident of Fishermen's Colony at Mahim. He witnessed the part of the incident when he came out after hearing the sound of explosion. He saw one dark blue coloured Van with registration number of Madhya Pradesh.

(i) He stated that in all, 6 persons got down from the Maruti Van.

(ii) He identified the appellant before the Court during dock proceedings as the person who threw bomb at the Basti.

(iii) He also identified the appellant in identification parade dated 15.05.1993 conducted by Special Executive Magistrate Moreshwar Thakur (PW-469) at Mahim police station.

(iv) He also identified the Maruti Van on 10.04.1993 in which all the accused persons including the appellant came to Machhimar Colony at Mahim as MP-D-13-385.

(v) He lodged a First Information Report (FIR) (Exh.43) in Crime No 185/1993 on 12.03.1993 in respect of explosions at Fishermen's Colony at Mahim.

276) It is contended on behalf of the appellant that evidence of the aforesaid eye witnesses is unreliable, untrustworthy and without any basis in order to reach to the conclusion of any guilt to justify the detention of the appellant any further in custody. It is further submitted that substantial improvements have been made by these witnesses during their evidence. We are unable to accept the same. All the eye-witnesses to the said incident have consistently deposed that the appellant came out of the van which came to Fishermen's Colony at Mahim. They identified the appellant before the Court during dock proceedings as well as in the test identification parade. They further identified the Maruti Van bearing number MP-D-13-385 as the vehicle in which the appellant along with other co-accused came to the scene of the crime. The contradictions pointed out by the counsel on behalf of the appellant are minor contradictions and does not go to the root of the matter. With regard to the same, the following observations of this Court in State of Uttar Pradesh vs. Krishna Master, (2010) 12 SCC 324 are relevant.

> 15. Before appreciating evidence of the witnesses examined in the case, it would be instructive to refer to the criteria for appreciation of oral evidence. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is found, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not

ordinarily permit rejection of the evidence as a whole.

16. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of the evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless the reasons are weighty and formidable, it would not be proper for the appellate court to reject the evidence on the ground of variations or infirmities in the matter of trivial details. Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before the police are meant to be brief statements and could not take place of evidence in the court. Small/Trivial omissions would not justify a finding by court that the witnesses concerned are liars. The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a shortcoming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it.

17. In the deposition of witnesses, there are always normal discrepancies, howsoever honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition, shock and horror at the time of occurrence and threat to the life. It is not unoften that improvements in earlier version are made at the trial in order to give a boost to the prosecution case, albeit foolishly. Therefore, it is the duty of the court to separate falsehood from the truth. In sifting the evidence, the court has to attempt to separate the chaff from the grains in every case and this attempt cannot be abandoned on the ground that the case is baffling unless the evidence is really so confusing or conflicting that the process cannot reasonably be carried out. In the light of these principles, this Court will have to determine whether the evidence of eyewitnesses examined in this case proves the prosecution case.

277) In State of H.P. vs. Lekh Raj, (2000) 1 SCC 247, it was observed:
"7. In support of the impugned judgment the learned counsel appearing for the respondents vainly attempted to point out some discrepancies in the statement of the prosecutrix and other witnesses for discrediting the prosecution version. Discrepancy has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecution's case doubtful. The normal course of the human conduct would be that while narrating a particular incident there may occur minor discrepancies, such discrepancies in law may render credential to the depositions. Parrot-like statements are disfavoured by the courts. In order to ascertain as to whether the discrepancy pointed out was minor or not or the same amounted to contradiction, regard is required to be had to the circumstances of the case by keeping in view the social status of the witnesses and environment in which such witness was making the statement. This Court in Ousu Varghese v. State of Kerala held that minor variations in the accounts of the witnesses are often the hallmark of the truth of their testimony. In Jagdish v. State of M.P. this Court held that when the discrepancies were comparatively of a minor character and did not go to the root of the prosecution story, they need not be given undue importance. Mere congruity or consistency is not the sole test of truth in the depositions. This Court again in State of Rajasthan v. Kalki held that in the depositions of witnesses there are always normal discrepancies, however, honest and truthful they may be. Such discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to

mental disposition such as shock and horror at the time of occurrence, and the like. Material discrepancies are those which are not normal and not expected of a normal person.

8. Referring to and relying upon the earlier judgments of this Court in State of U.P. v. M.K. Anthony, Tahsildar Singh v. State of U.P., Appabhai v. State of Gujarat and Rammi v. State of M.P.,this Court in a recent case Leela Ram v. State of Haryana held:
"There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefor should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence....
The court shall have to bear in mind that different witnesses react differently under different situations: whereas some become speechless, some start wailing while some others run away from the scene and yet there are some who may come forward with courage, conviction and belief that the wrong should be remedied. As a matter of fact it depends upon individuals and individuals. There cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction not falling within a set pattern is unproductive and a pedantic exercise."

278) In Waman vs. State of Maharashtra, (2011) 7 SCC 295, it was observed:

"35. It is clear that not all the contradictions have to be thrown out from consideration but only those which go to the root of the matter are to be avoided or ignored. In the case on hand, as observed earlier, merely on the basis of minor contradictions about the use and nature of weapons and injuries, their statements cannot be ignored in toto."

279) To sum up, there are bound to be some discrepancies between the narrations of different witnesses and unless the contradictions are of a material dimension, the same should not be used to disbelieve the evidence in its entirety. In view of the above, we are of the view that the contradictions pointed out by the counsel on behalf of the appellant are minor contradictions and does not render the evidence unbelievable.

Investigation, Recoveries and FSL Reports

280) PWs-5, 6 and 13 have duly identified the appellant in the TIP dated 15.05.1993 for which memorandum panchnama proved as Exhibit 1515 was prepared by Moreshwar Thakur (PW-469).

281) It is contended on behalf of the appellant that there is interpolation in the FIR as White coloured Maruti Van has been changed with dark blue coloured Maruti Van. We have verified the entire contents of the FIR. From the perusal of the entire complaint, it is clear that the colour of Maruti Van was dark blue only and, hence, there is no interpolation.

Deposition of Shantaram Gangaram Hire (PW-562)

He was the police officer who visited the blast site and prepared spot panchnama (Exh. 1942) in the presence of panch witnesses, viz., Dayaram Timbak Akare and Mahendra Sadanand Mehre. PW-562 collected the articles from the place of occurrence in the presence of experts vide Panchnama Exh. 1221. The articles recovered from the blast site were sent to the Forensic Science Laboratory (FSL) for opinion. The FSL Report is Exhibit 1943 which shows the remnants to be explosives and part of hand grenades.

Evidence regarding injured and Death Victims:

Deposition of Achyut Shamrao Pawal (PW-542)

282) He was the police officer who collected the injury certificates of injured persons from Bhabha Hospital, namely, Mr. Gurudutt Agaskar, Ms. Rajashri Agaskar and Ms. Sheetal Keni. The certificates proved that they sustained injuries during the blast. PWs-13 and 412 Sheetal Keni proved to have sustained injuries during the blast.

283) Dr. Wadekar (PW-641) and Dr. Krishnakumar (PW-640) issued the injuries certificates Exh. 2374 and Exhibit 2372 to PW-13 and Sheetal Keni (PW-412), respectively.

284) Gajanan Tare (PW-413) (husband of the deceased Gulab Tare) and Karande (PW-414) (nephew of the deceased Hira Dhondu Sawant) claimants of two bodies, have proved the death of Mrs. Gulab Tare (wife of PW-413) and Smt. Hira Dhondu Sawant (PW 414's aunt) in the said incident. Dr. Pujari (PW-482) have deposed regarding the cause of death of Gulab Tare and PW-480 have deposed about the cause of death of Hira Dhondhu Sawant and proved Exh. 1603 and Exh. 1598 respectively. Achyut Shamrao Pawal (PW-542) also proved killing of 3 persons at Mahim blast.

Vehicle (Maruti Van) used in the incident

285) It is seen from the materials that the said Maruti Van in which A-13, 32, 36, 39, 43 and Mehboob Liyaqat Khan (AA) were traveling was arranged by Suleman Lakdawala (PW-365) at the behest of Mohd. Shafi Jariwala (AA). This fact has been proved by the said witness. Further, the depositions of PW-342 and PW-366 are pertinent as they complete the link relating to purchase/arrangement of the said Maruti Van used in the incident.

Deposition of Kailash Govind Rao Baheti (PW-342)

PW-342 deposed as under:

> "On 18.01.1993 I had received a telephone call given by Shakil Hasham from Bombay. Shakil requested me to book one red coloured Maruti Van in the name of Asif Darvesh resident of M.G. Road, Indore and another new Maruti Van of blue colour in the name of Shri Kasam Ahmed residing at Indira Nagar, Ujjain. He also requested me to register both the Maruti Van at Indore and send the same to Bombay. He also told me that the payments' of the same would be made at Bombay to the driver. I quoted a price of Rs. 1,69,000/- per vehicle inclusive of registration and transport charges. I was having red colour Maruti Van brought by me from M/s Bhatia & Company, Gurgaon, Haryana and blue colour Maruti Van brought from Vipul Motors, Faridabad, Haryana, in my stock. I had brought both the said vehicles by making advance payment. After receipt of booking from Shakil Hasham for red and blue colour brand new Maruti Vans, I informed the details of the purchasers to M/s Bhatia Company and M/s Vipul Motors. After receipt of said letters and bills from both the said companies in the name of purchasers who wanted red and blue Maruti Vans I sent papers of both the Vans for registration to R.T.O. The blue colour Maruti Van was registered in the name of Kasam Ahmed at Ujjain R.T.O. The blue colour Maruti Van could not be registered at Indore due to lack of E form necessary for registration. Thereafter, I sent both the said vans to Bombay to Shakil Hasham. Shakil Hasham received the delivery and paid Rs.3,38.000/- to my drivers. My drivers gave the said amount to me. I made the necessary entries in my office record for sending the said Vans to Bombay to Shakll Hasham after purchasing"the same for the parties told by him. The R.T.O. Authority at Ujjain had given registration Number MP-13-D-0385 to "blue colour Maruti Van. Today I am not remembering the engine number and chassis number of the said Maruti Van."
>
> (emphasis added)

Deposition of Shakeel Suleman Hasham (PW-366)

He deposed regarding the purchase of the said Maruti Vans as follows:

"In the same month (February 1993) I had also arranged for one blue colour and another red colour Maruti Van also registered at Madhya Pradesh for Suleman Lakdawala. The said vehicles were registered at Madhya Pradesh Indore in the name of the purchasers given to me by Suleman Lakdawala. I had given the work of registration to one Kailash Baheti of Indore. Both the said vans were insured by Insurance Agent Rakesh Tiwari before giving the same to Suleman Lakdawala. Both the said vehicles had arrived from Indore. I had sent the same to the Petrol pump of Suleman and asked him to take the delivery from the said drivers who had brought the said vehicles. Accordingly he took the delivery by making payment to the drivers."

Thus, PW 366, in his deposition confirms that he had asked PW 342 to arrange for two Maruti Vans (red and blue color each) in February, 1993. The deposition of PW-342 therefore corroborates with the deposition of PW-366 in material particulars that both the vans were purchased in Madhya Pradesh and the blue Maruti Van was registered in Ujjain bearing registration number MP-13-D-0385. It is established that this number and the blue Maruti van had been duly identified by PWs- 5, 6 and 13 in court.
286) Further, the deposition of Mukhtar Ahmed (PW-281) reveals about the cavity which was prepared by him in the said Maruti Van at the behest of Mohd. Shafi Jariwala (AA). This further corroborates the fact that it is the same vehicle which was used in the Mahim Causeway incident.

Training in handling of arms and ammunitions and explosives at Sandheri and Borghat

Deposition of Harish Chandra Keshav Pawar (PW-105).
287) At the relevant time, PW-105 was studying in 8th standard and was residing at Sandheri and is an eye-witness to the incident:-
(i) On 08.03.1993, at about 09:00 hrs, a special event occurred on the eastern side hillock to village Sandheri;
(ii) The said event was in connection with firing of guns;
(iii) 10-11 persons participated in the said firing.
(iv) The card board sheets were placed by the side of hillock;
(v) 4-5 persons from the group of 8-10 persons were firing at the said cardboards using gun;
(vi) He knows some persons, viz., A-17, A-79 from the group as they were from Sandheri Village;
PW-105 is an eyewitness to the practice session which took place at the hillocks of Sandheri Village. He was thoroughly cross examined by the defence and he withstood rigorous cross examination without being shaken. The deposition of PW-105 corroborates the fact that the training in fire arms was conducted at the hillocks of Sandheri and 10-11 persons participated in the said training.
Deposition of Rajaram Ramchandra Kadam (PW-106)
The witness deposed as under:
(i) He is an agriculturist and resides at Sandheri;
(ii) On 08.03.1993, about 9.30 a.m., he heard the sound of firing coming from Chinchechamal;
(iii) He went to Chinchechamal and noticed two men standing armed with guns and a cardboard target was placed near the hillock;
(iv) He knew 5 persons from the group as they were from Sandheri Village;
(v) He identified them before the court as A-79, A-106, A-131, A-111 and A-78.

PW-106 is also an eye witness to the practice session which took place at the hillocks of Sandheri Village. Both the above-said witnesses corroborate with each other on the fact that training in fire arms was conducted at the hillocks of Sandheri. These witnesses also corroborate the confessional statements and lend credibility to the incident of weapon training as revealed by various accused persons in their confessions.
Deposition of Namdeo Pundlik Mahajan (PW-587)
He is a constable attached with Goregaon Police Station, District

Raigad. The witness deposed that:

(i) He inspected the site of the incident and collected 3 empties, 6 lead pieces, cardboard targets, stones bearing the marks due to hitting of bullets and broken branch of a tree.

(ii) The aforesaid articles were collected and seized by him in the presence of panchas and panchnama Exh. 539 was drawn by him.

(iii) He wrote a written complaint which was registered by Head Constable.

The deposition of PW-587 further proves that firing took place at the hillocks of Village Sandheri.

Deposition of Mahadeo Jadav (PW-103)

He is a panch witness who deposed about the seizures affected by police at the hillocks of Village Sandheri on 29.03.1993.

288) It is contended on behalf of the appellant that the aforesaid eye witnesses have not even named or identified the appellant to be involved in any training at Sandheri or Borghat and there is no other independent evidence to connect him to the said training incident. Even though the aforesaid eye-witnesses i.e., PWs-105 and 106 have not specifically named the appellant, their confessional statements duly corroborate with the confessional statements of various co-accused that training in fire arms was conducted at the hillocks of Sandheri. As far as naming of the appellant is concerned, mostly, the co-accused persons referred to above have stated to his participation in addition to his own confession.

289) It is further contended on behalf of the appellant that it is an admitted case that there were 3 accused persons by name of Bashir, since the name is very common in Muslims, so there is bona fide doubt about reference to the present appellant in the confessional statements of co-accused, viz., A-16, A-23, A-25, A-32, A-77 regarding his participation in the conspiratorial meetings. On this particular contention, the confessions of A-23, A-32 and deposition of PW-2 are very clear about the presence of the appellant in those meetings and there is no doubt about reference to the appellant.

290) It is also contended on behalf of the appellant that since he has stated in his confessional statement that he was arrested 6-7 days after the blasts, hence, the date of arrest should be 19/20.03.1993, but actually he has been shown to be arrested on 30.03.1993 so he was illegally detained by the police. The said submission is baseless and misleading as the defence has failed to substantiate this averment and no document has been placed on record to show that after the arrest when the accused was produced before the Court, he immediately made any such complaint about his illegal detention by the police.

291) Mr. Ponda further contended on behalf of the appellant that the Test Identification Parade was improperly conducted and, hence, no reliance can be placed on such evidence. The materials relied on by the prosecution show that in the present case, the TIP was validly conducted and all necessary precautions were ensured by the SEM. Further, the evidence with regard to the TIP can only be used as a corroborative piece of evidence and is a test to strengthen trustworthiness of the substantive evidence of the witness before the Court. In the present case, all the witnesses have identified the appellant before the Court and even the SEM on this aspect withstood his cross examination. Further, with regard to the same, this Court in Mulla vs. State of U.P., (2010) 3 SCC 508, observed as follows:

> "43. As was observed by this Court in Matru v. State of U.P. identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroboration of the statement in court. (Vide Santokh Singh v. Izhar Hussain.)
>
> 44. The necessity for holding an identification parade can arise only when the accused persons are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other

words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime."

292) The above said evidence thus substantiates and establishes the charges framed against the appellant.

Sentence:

293) The prosecution submitted that the appellant was given full opportunity to defend himself on the question of quantum of sentence. His statement was recorded on 05.12.2006 (Exh. 3047) in which he prayed that the following factors, amongst others, may be considered while determining his sentence:

(i) He has been in custody since his arrest in April, 1993;
(ii) His sisters are dependent on him;
(iii) He has suffered during riots; and
(iv) He has no criminal antecedent beyond this case.

294) The Designated Court duly considered all these factors while awarding the sentence as aforesaid. Further, the appellant was a coveted member of the conspiracy and was indulged in the acts furthering the object of the conspiracy. We are satisfied that the appellant was involved in the conspiracy from planning to execution.

295) In the light of the above discussion, we confirm the conviction and sentence awarded by the Designated Court and the appeal is liable to be dismissed.

Criminal Appeal Nos. 651-652 of 2008

Dawood @ Dawood Taklya
Mohammed Phanse @
Phanasmiyan (A-14) ... Appellant(s)

vs.

The State of Maharashtra,
Through STF, CBI Mumbai ... Respondent(s)

****

296) Mr. Priyadarshi Manish, learned counsel appeared for the appellant (A-14) and Mr. Mukul Gupta, learned senior counsel duly assisted by Mr. Satyakam, learned counsel for the respondent.

297) The present appeals are directed against the final judgment and order of conviction and sentence dated 22.09.2006 and 30.05.2007 respectively, whereby the appellant (A-14) has been convicted and sentenced to rigorous imprisonment (RI) for life by the Designated Court under TADA for the Bombay Bomb Blast Case, Greater Bombay in B.B.C. No.1/1993.

Charges:

298) A common charge of conspiracy was framed against all the co-conspirators including the appellant. The relevant portion of the said charge is reproduced hereunder:

"During the period from December, 1992 to April, 1993 at various places in Bombay, District Raigad and District Thane in India and outside India in Dubai (U.A.E.) and Pakistan, entered into a criminal conspiracy and/or were members of the said criminal conspiracy whose object was to commit terrorist acts in India and that you all agreed to commit following illegal acts, namely, to commit terrorist acts with an intent to overawe the Government as by law established, to strike terror in the people, to alienate sections of the people and to adversely affect the harmony amongst different sections of the people, i.e. Hindus and Muslims by using bombs, dynamites, hand grenades and other explosive substances like RDX or inflammable substances or fire-arms like AK-56 rifles, carbines, pistols and other lethal weapons, in such a manner as to cause or as likely to cause death of or injuries to any person or persons, loss of or damage to and disruption of supplies of services essential to the life of the community, and to achieve the objectives of the conspiracy, you all agreed to smuggle fire-arms, ammunitions, detonators, hand grenades and high explosives

like RDX into India and to distribute the same amongst yourselves and your men of confidence for the purpose of committing terrorist acts and for the said purpose to conceal and store all these arms, ammunitions and explosives at such safe places and amongst yourselves and with your men of confidence till its use for committing terrorist acts and achieving the objects of criminal conspiracy and to dispose off the same as need arises. To organize training camps in Pakistan and in India to import and undergo weapons training in handling of arms, ammunitions and explosives to commit terrorist acts. To harbour and conceal terrorists/co-conspirators, and also to aid, abet and knowingly facilitate the terrorist acts and/or any act preparatory to the commission of terrorist acts and to render any assistance financial or otherwise for accomplishing the object of the conspiracy to commit terrorist acts, to do and commit any other illegal acts as were necessary for achieving the aforesaid objectives of the criminal conspiracy and that on 12.03.1993 were successful in causing bomb explosions at Stock Exchange Building, Air India Building, Hotel Sea Rock at Bandra, Hotel Centaur at Juhu, Hotel Centaur at Santacruz, Zaveri Bazaar, Katha Bazaar, Century Bazaar at Worli, Petrol Pump adjoining Shiv Sena Bhavan, Plaza Theatre and in lobbing handgrenades at Macchimar Hindu Colony, Mahim and at Bay-52, Sahar International Airport which left more than 257 persons dead, 713 injured and property worth about Rs.27 crores destroyed, and attempted to cause bomb explosions at Naigaum Cross Road and Dhanji Street, all in the city of Bombay and its suburbs i.e. within Greater Bombay. And thereby committed offences punishable under Section 3(3) of TADA (P) Act, 1987 and Section 120-B of IPC read with Sections 3(2)(i)(ii), 3(3)(4), 5 and 6 of TADA (P) Act, 1987 and read with Sections 302, 307, 326, 324, 427, 435, 436, 201 and 212 of Indian Penal Code and offences under Sections 3 and 7 read with Sections 25 (1A), (1B)(a) of the Arms Act, 1959, Sections 9B (1)(a)(b)(c) of the Explosives Act, 1884, Sections 3, 4(a)(b), 5 and 6 of the Explosive Substances Act, 1908 and Section 4 of the Prevention of Damage to Public Property Act, 1984 and within my cognizance."

In addition to the above-said principal charge of conspiracy, the appellant was also charged on the following counts:

At head Secondly; The accused committed an offence punishable under section 3(3) of TADA by committing the following overt acts:

(a) He attended the conspiratorial meeting with Dawood Ibrahim Kaskar and Tiger Memon at Dubai on 19.01.1993 wherein he agreed to arrange for landing of arms, ammunitions and explosives in India to be used for committing terrorist acts;

(b) He participated in both the landings at Shekhadi, which was organized by Tiger Memon and his associates between 02-09.02.1993;

At head Thirdly; The appellant, by committing the aforesaid acts, committed an offence punishable under Section 6 of the TADA.

299) The Designated Court found the appellant guilty on all the aforesaid charges. The appellant has been convicted and sentenced for the above said charges as under:

Conviction and Sentence:

i) The appellant has been convicted for the offence of conspiracy read with the offences described at head firstly and sentenced to RI for life alongwith a fine of Rs. 1,00,000/-, in default, to further undergo RI for 3 years for commission of offence under Section 3(3) of TADA and Section 120B of the IPC. (charge firstly).

ii) The appellant has been convicted for commission of offences under

Section 3(3) of TADA mentioned at head secondly and sentenced to RI for 14 years alongwith a fine of Rs.50,000/-, in default, to further undergo RI for 1 year. (charge secondly).

iii) The appellant has been convicted and sentenced to RI for life alongwith a fine of Rs.50,000/-, in default, to further undergo RI for a period of 1 year for commission of offences under Section 6 of TADA (charge thirdly).

Evidence

300) The evidence against the appellant (A-14) is in the form of:-

(i) his own confession;

(ii) confessions made by other co-conspirators; (co-accused);

(iii) testimony of prosecution witnesses; and

(iv) documentary evidence.

Confessional statement of Dawood @ Dawood Taklya Mohammed Phanse @ Phanasmiyan (A-14)

301) The involvement of the appellant in the conspiracy is evident from his own confession recorded under Section 15 of TADA on 15.04.1993 (17:55 hrs.) and 17.04.1993 (19:30 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The said confessional statement is summarized hereinbelow:-

(i) The appellant along with Sharif Abdul Gafoor Parkar (A-17) and Rahim Abbas Karamblekar @ Rahim Laundrywala (A-40) - who died on 14.12.1993 before the charges were framed, was working for Tiger Memon in effecting the landings of smuggled items.

(ii) On 19.01.1993, as per Tiger's instructions, the appellant travelled to Dubai from Bombay via flight where he met him (Tiger Memon) at Dubai Airport. Tiger asked him to stay at Hotel Delhi Darbar. After 2-3 days, Tiger took him to the residence of Dawood Ibrahim.

(iii) At that time, Dawood Ibrahim asked the appellant if he could arrange for landing of chemicals i.e., gun powder and weapons which would be smuggled into India and also told him that they have to take revenge for the demolition of Babri Masjid. He then asked Tiger the cost for arranging the explosives who replied that it would be 9-10 lakhs.

(iv) The appellant agreed to arrange for the landing of the arms, explosives and ammunitions.

(v) On the next day, at Dubai Airport, Tiger reiterated him to take care of the arrangements as told to him by Dawood Ibrahim and also that he (Tiger) will inform about further course of action after reaching Bombay.

(vi) Thereafter, he returned to Bombay on 23.01.1993. After 5-6 days, he briefed his partners Rahim Laundrywala and Sharif Abdul Gafoor Parker @ Dadabhai (A-17) individually about the meeting with Dawood Ibrahim in Dubai and they both agreed to do the work.

(vii) Thereafter, in the end of January, on Shafi's instructions, he made arrangements for the landing at Shekhadi but the consignment did not arrive.

(viii) On 3rd February, 1993, he got to know that landing was to take place in the evening and, accordingly, he told A-40 to make arrangements for the same. He also discussed about the landing with the customs officials at Mhasla and told them that they would be given Rs. 1.6 lakh as fixed earlier after completion of work.

(ix) Around 8-9 p.m., he reached the spot of landing where many other persons were already present. At around 10 p.m., Tiger came there along with Anwar, Parvez Nazir Ahmed Shaikh (A-12) and 20-25 other persons.

(x) The appellant saw that the guns were being unloaded from the trawlers that had arrived and were subsequently loaded in a truck.

(xi) After the loading, he along with Tiger and others went to Waghani Tower.

(xii) The cargo was unloaded from the truck at Waghani Tower and he saw that rifles, pistols, bullets, hand grenades and explosives were being taken out from the boxes by Tiger's men.

(xiii) Tiger also showed him a pencil like thing and told him that it was worth Rs. 25,000/- and it could even explode Oberoi Hotel

(xiv) After 2-3 days, he was paid Rs. 1 lakh for the above work which was delivered at his residence by Abdul Gani Ismail Turk (A-11).

(xv) On 08.02.1993, he collected 3 rifles and 6 magazines from the

residence of Muzammil Umar Kadri (A-25) on the instructions of Tiger Memon and delivered the same to Tiger along with two other persons.

(xvi) On the same day, in the night, he assisted Tiger Memon in the landing of 'Kala Sabun' at Shekhadi alongwith co-accused Salim Rahim Shaikh (A-52), Khalil Ahmed Sayed Ali Nasir (A-42), Anwar Theba (AA), A-17, A-12, A-11, Shaikh Ali Shaikh Umar (A-57), Shahjahan Ibrahim Shaikhdare (A-56), Abbas (A-33), Mohammed Iqbal Mohammed Yusuf Shaikh (A-23), A-25, Shafi (AA) and others.

(xvii) For the above work, he received Rs. 9 lakhs from Shafi and Rs. 5 lakhs from A-17. The details of the amount paid by him to the officials of Customs Department, various police officers and other private persons, who assisted in the above landings are also available in his confession.

302) On perusal of the aforesaid confessional statement of the appellant (A-14), the following facts emerge:

(i) The appellant had participated in the conspiratorial meeting with Dawood Ibrahim (AA) and Tiger Memon on 19.01.1993 in Dubai.

(ii) In the said meeting, the appellant had agreed to arrange for the landing of arms and ammunitions and explosives which were to be smuggled into India.

(iii) The appellant participated and organised the landing of arms at Shekhadi with the help of other co-accused persons. (iv) He was fully conscious that those arms and ammunitions and explosives were to be used for carrying out terrorist acts in order to take revenge for the demolition of Babri Masjid.

303) Mr. Manish, learned counsel for the appellant contended that the appellant was merely a landing agent and he had nothing to do with the said conspiratorial meeting at Dubai and that he had gone to Dubai only to meet his relatives and was not aware about the contents of the bags which had landed on the Shekhadi coast.

304) On perusal of the abovesaid confession, it is established that the appellant played a key role in effecting and organizing landing of arms and ammunitions and explosive substances and was actively involved with Tiger Memon's illegal and nefarious activities on regular basis. He attended a conspiratorial meeting with Dawood Ibrahim and Tiger Memon wherein he agreed to arrange for landing of arms and ammunitions and explosives which were to be used for committing terrorist acts.

305) It was also contended on behalf of the appellant that he was not aware of the contents of the boxes/parcels for which the said landing was done at Shekhadi. The fact that the appellant had knowledge about the contents of the boxes/parcels is clear from his own confession wherein he has stated that he was present at the time when rifles, pistols, bullets, detonators, hand grenades etc. were being unloaded from the boxes at Waghani Tower and further that Tiger Memon had shown him a pencil like thing and told him that it was worth Rs. 25,000/- and it could even explode Oberoi Hotel. From the above, it is very much clear that the appellant was not mere a landing agent. It is thus established that he was a conspirator whose primary role was smooth landing of the said arms and ammunitions and explosives.

Confessional Statements of co-accused:

306) Apart from his own confession, the involvement of the appellant has also been disclosed in the confessional statements of the following co-accused. The legality and acceptability of the confessions of the co-accused has already been considered by us in the earlier part of our discussion. The said confessions insofar as they refer to the appellant (A-14) are summarized hereinbelow:

Confessional Statement of Abdul Gani Ismail Turk (A-11)

Confessional statement of A-11 under Section 15 of TADA has been recorded on 15.04.1993 (22:35 hrs.) and 18.04.1993 (1:15 hrs.) by Shri Prem Krishna Jain (PW-189), the then DCP, Zone X, Bombay. A brief summary of the confession made by A-11 with reference to the appellant is reproduced below:

(i) The appellant assisted Tiger Memon in his smuggling activities and mainly in the landing of smuggled goods.

(ii) The appellant participated in the landing of arms and ammunitions and explosives at Shekhadi on 03.02.1993.

(iii) On 08/09.02.1993, Tiger Memon instructed A-11 to go along with other

accused, viz., Suleman Mohammed Kasam Ghavate (A-18) and Sayyed Abdul Rahman Shaikh (A-28) to get the 'Kala Sabun' (RDX) from Mhasla and for this purpose he further instructed him to pay Rs. 1 lakh to the appellant. Accordingly, the said amount was paid to the appellant and Kala Sabun was loaded in a tempo in the evening.

Confessional Statement of Parvez Nazir Ahmed Shaikh (A-12)

Confessional statement of A-12 under Section 15 of TADA has been recorded on 18.04.1993 (14:00 hrs.) and 21.04.1993 (6:50 hrs.) by Shri Prem Krishna Jain (PW-189), the then DCP, Zone X, Bombay. A brief summary of the confession made by A-12 with reference to the appellant is reproduced below:

(i) The appellant along with other co-accused persons assisted Tiger in the landing of rifles, revolvers, bullets, wire bundles and black soap on 03.02.1993 at Shekhadi and further in the transportation of the same to the Waghani Tower and then to Bombay.

(ii) He also assisted in the second landing operation at Shekhadi which took place in the second week of February, 1993 after which the consignment was taken to the Tower and, thereafter, to Bombay with his assistance.

Confessional Statement of Imtiaz Yunus Miyan Ghavate (A-15)

Confessional statements of A-15 under Section 15 of TADA has been recorded on 07.05.1993 (12:00 hrs.) and 09.05.1993 (13:30 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay A brief summary of the confession made by A-15 with reference to the appellant is reproduced below:

(i) The appellant, A-17 and A-40 were the landing agents of Tiger Memon who assisted him in smuggling the silver sent by his brothers in Dubai.

(ii) The appellant actively participated in the first landing at Shekhadi.

Confessional Statement of Sharif Abdul Gafoor Parkar @ Dadabhai (A-17)

Confessional statement of A-17 under Section 15 of TADA has been recorded on 18.04.1993 (00:15 hrs.) and 20.04.1993 (02:50 hrs.) by Shri Prem Krishna Jain (PW-189), the then DCP, Zone X, Bombay. The said confession reveals as under:

(i) The appellant was a close associate of Tiger Memon and was handling the landing activities of smuggled goods (like silver) for Tiger Memon.

(ii) The appellant participated in the first landing operation at Shekhadi and transportation of the arms and explosives to Waghani Tower.

(iii) He (A-17) alongwith the appellant burnt the empty gunny bags and boxes which contained the above arms and ammunitions.

(iv) The appellant participated in the second landing operation at Shekhadi.

(v) He (A-17) narrated his conversation with the appellant about his meeting with Dawood Ibrahim in Dubai regarding smuggling of chemicals for taking revenge against Hindus for the demolition of Babri Masjid.

(vi) He also stated about the receipt of Rs. 9 lacs by the appellant from Shafi for the above landing operations.

(vii) He has stated about the distribution of money to Police/Customs officials.

Confessional Statement of Suleman Mohd. Kasam Ghavate (A-18)

Confessional statement of A-18 under Section 15 of TADA has been recorded by Shri Sanjay Pandey (PW-492) and Shri UM Kale (PW-190). The said confession reveals as under:

(i) On 06.02.1993, when the appellant alongwith A-17 was present there, A-18 was assisting in loading 59 to 63 packets in a tempo bearing No. MMP 4799.

(ii) Tiger instructed A-18 to go to the appellant's house and leave the said tempo at his place.

(iii) On 8th or 9th February, 1993, he went to Mhasala tower in a tempo where the appellant was present alongwith Tiger and others. The goods were loaded in the said tempo and he was asked to take the said tempo to Mahad.

Confessional Statement of Manoj Kumar Bhanwar Lal Gupta (A-24)

Confessional statement of A-24 under Section 15 of TADA has been recorded on 30.04.1993 (16:15 hrs.) and 09.05.1993 (19:00 hrs.) by Shri Sanjay Pandey (PW-492), the then DCP, Zone-VIII, Bombay. The said confession reveals that the appellant participated in the landing of rifles, pistols, hand grenades and black soap at Shekhadi on 02/03.02.1993

Confessional Statement of Muzzamil Umar Kadri (A-25)

Confessional statement of A-25 under Section 15 of TADA was recorded on 17.04.1993 (14:00 hrs.) and 20.04.1993 (12:50 hrs.) by Shri Sanjay Pandey (PW-492), the then DCP, Zone-VIII, Bombay. The said confession reveals as under:

(i) The appellant used to do the work of unloading of smuggled goods for Tiger Memon

(ii) In or around March/April 1992 and also in August, 1992, he had assisted the appellant in unloading silver for Tiger Memon for which he received Rs. 1,200/- and Rs. 1,500/- respectively.

(iii) The appellant participated in the landing operations at Shekhadi that took place on 3rd February and 9th February, 1993.

Confessional Statement of Sayyed Abdul Rehman Kamruddin Syed (A-28)

Confessional statement of A-28 under Section 15 of TADA has been recorded on 18.04.1993 (17:00 hrs.) and 01.05.1993 (23:30 hrs.) by Shri Sanjay Pandey (PW-492), the then DCP, Zone-VIII, Bombay. His confessional statement reveals that on 05.02.1993, at the instance of the appellant and A-17, about 55-60 sacks filled with something were dug out from a pit and, thereafter, loaded in a tempo.

Confessional Statement of Khalil Ahmed Sayyed Ali Nazir (A-42)

Confessional statement of A-42 under Section 15 of TADA was recorded by Shri P.D. Pawar (PW-185). The said confession reveals as under:

(i) A-42 started doing smuggling of silver and entered into smuggling activity at the behest of the appellant whom he knew even prior to 1983. The smuggling was mainly done for Tiger Memon.

(ii) The appellant was a close associate of Tiger Memon.

(iii) The appellant was involved in the landing of arms, hand grenades and explosives on 03.02.1993 at Shekhadi.

(iv) On 22.03.1993, the appellant gave him a bag containing two revolvers for keeping it with him which were subsequently recovered by the police after his arrest.

Confessional Statement of Mohd Rafiq Musa Miariwala @ Rafiq Madi (A-46)

Confessional statement of A-46 under Section 15 of TADA has been recorded on 21.04.1993 (19:00 hrs.) and 23.04.1993 (21:25 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. A-46 in his confession stated that the appellant participated in the landing that took place at Shekhadi on 03.02.1993

Confessional Statement of Sujjad Alam Abdul Hakim Nazir (A-61)

Confessional statement of A-61 under Section 15 of TADA was recorded by Shri Krishan Lal Bishnoi (PW-193). The said confession reveals as under:

(i) The appellant participated in the landing of arms and ammunitions at Shekhadi beach on 03.02.1993 and in the transportation of the goods to the Tower.

(ii) On 09.02.1993, the appellant alongwith A-61 and others picked up 3 rifles and 6 cassettes from Muzammil Umar Kadri (A-25) and handed them over to Tiger near Lonar Phata.

(iii) The appellant also participated in the second landing of arms and ammunitions at Shekhadi on 09.02.1993, and in their transportation to the Tower.

(iv) A-61 received Rs. 4,000/- from the appellant for both the landings.

Confessional Statement of Tulsiram Dhondu Surve (A-62)

Confessional statement of A-62 under Section 15 of TADA has been recorded by Shri T.S. Bhal (PW-191). The said confession reveals as under:

(i) The appellant was a close associate of Tiger Memon.

(ii) In or around 1992, the appellant, along with Tiger Memon, had approached him to allow them to keep the silver smuggled by them at the Microwave station, atop the hill of Waghani village, for some consideration

(bribe), to which he consented.
(iii) The appellant had assisted Tiger Memon in the smuggling activity that was carried out at Waghani Tower and bribe was also paid to A-62 and others for the same.
(iv) On 03rd February and 7th February, the appellant alongwith Tiger Memon and others was present at Waghani Tower while the smuggled RDX and arms and ammunitions were brought from Shekhadi and unloaded and reloaded in the vehicles brought from Bombay. The appellant actively participated in the above activity.
Confessional Statement of Nasir Abdul Kadar Kewal @ Nasir Dhakla (A-64)

Confessional statement of A-64 under Section 15 of TADA has been recorded on 22.01.1995 and 24.01.1995 by Shri H.C. Singh (PW-474), the then Superintendent of Police, CBI/SPE/STF, New Delhi. The said confession reveals as under:
(i) The appellant participated in the first and second landing at Shekhadi.
(ii) The appellant had arranged for and deployed labour during the said landing operations.
Confessional Statement of Jayant Keshav Gurav (A-82)
Confessional statement of A-82 under Section 15 of TADA has been recorded by T.S. Bhal (PW-191). The confession reveals that the appellant was a landing agent of Tiger Memon and was engaged in his smuggling activities.
Confessional Statement of Mohd. Sultan Sayyed (A-90)
Confessional statement of A-90 under Section 15 of TADA has been recorded by Shri C Prabhakar (PW-186). The said co-accused was the Superintendent, Custom Marine Preventive, Alibaug Circle. His confession reveals as under:
(i) On 29.01.1993, the appellant met Shri R.K. Singh, Assistant Collector at the Guest house in Hareshwar village.
(ii) On 12.02.1993, the appellant's son handed over a plastic bag containing Rs. 3 lakhs to Shri Singh, Assistant Collector.
Confessional Statement of Mohd. Parvez Zulfikar Qureshi (A-100)

Confessional statement of A-100 under Section 15 of TADA has been recorded on 15.04.1993 (23:30 hrs.) and 17.04.1993 (17:00 hrs.) by Shri Sanjay Pandey (PW-492), the then DCP, Zone-VIII, Bombay. His confession reveals the active participation of the appellant in the landing of arms and ammunitions, explosives and detonators on 09.02.1993 at Shekhadi coast and, thereafter, in the transportation of the said consignments to Waghani Tower.
Confessional Statement of Shahnawaz Khan Faiz Mohammed Khan (A-128)

His confessional statement under Section 15 of TADA has been recorded by H.C. Singh (PW-474). His confession also reveals the participation of the appellant in the landing and transportation of arms and ammunitions and explosives at Shekhadi.
307) A perusal of the confessional statements of all the above accused, viz., A-11, A-12, A-15, A-17, A-18, A-24, A-25, A-28, A-42, A-46, A-61, A-62, A-64, A-82, A-90, A-100 and A-128 clearly establish the fact that it corroborate with the confessional statement of the appellant (A-14). After consideration of all the abovesaid confessional statements of the co-accused, the involvement of the appellant in the conspiracy is established in as much as:-
(i) The appellant was closely associated with Tiger Memon and used to make arrangements for landing of goods smuggled by him.
(ii) The appellant actively participated and organised the said landings of arms and ammunitions, and explosives at Shekhadi and also rendered assistance for its safe transportation.
(iii) The appellant was present at the landing site as well as at the Tower where the arms and ammunitions and explosives were shifted in false cavities.
(iv) The appellant attended conspiratorial meeting at Dubai.
(v) The appellant worked in close association with Tiger Memon and also paid the people for the services rendered by them.
(vi) The appellant held a commanding position and also had people who worked for him.
(vii) The appellant was not under threat or coercion and all his actions

were voluntary. He worked in pursuance of the conspiracy to achieve the common object.
(ix) The appellant was also managing government servants by giving them bribe on behalf of Tiger Memon which shows his closeness with Tiger Memon.
(x) The bribe was being paid to the officials by the appellant on behalf of Tiger Memon for the said landings at Shekhadi.
(xi) The appellant was in the core group of primary conspirators. It is not that he merely participated in the landings as an agent, on the contrary, he participated in the landings after being fully agreeable to the ultimate object of the conspiracy.
(xii) His role in achieving the ultimate object of the conspiracy was very crucial and decisive.
Deposition of Prosecution Witnesses:
308) Apart from the aforesaid evidence, the involvement and the role of the appellant in the conspiracy, as stated above, is disclosed by the deposition of various prosecution witnesses which are as under:
Deposition of Mohd. Usman Jan Khan (PW-2)
The relevant material in his evidence is as follows:-
(i) PW-2 knew the appellant as Dawood Taklya
(ii) PW-2 identified the appellant before the court in dock proceedings.
(iii) The appellant was present in the hut at Shekhadi and in his (PW-2) presence, Tiger Memon with the help of the appellant and others present there, opened 7 bags which contained guns, pistols and grenades.
(iv) The appellant and Dadabhai's (A-17) men assisted in unloading the arms and ammunitions from the boats and reloading them in the truck.
(v) The boxes in which arms and ammunitions were brought from Shekhadi were burnt by the appellant, A-17 and his son in the backyard at the instance of Tiger Memon.
(vi) Tiger Memon also instructed the appellant to conceal some boxes of "Kala Sabun".
(vii) The appellant was present at Shekhadi at the time of landing and his men unloaded and loaded them in a Tempo.
309) The aforesaid deposition fully establishes the charges framed against the appellant. It is further submitted that the testimony of PW-2 also corroborates with the confessions of the co-accused as well as the confession of the appellant.
Travel to Dubai to attend Conspiratorial Meeting
310) The prosecution submitted that the appellant travelled to Dubai from Bombay on 19.01.1993 and returned on 23.01.1993. The departure and arrival details of the appellant have been proved by P.R. Patil (PW-242) and S.S. Chaudhary (PW-223), Immigration Officers, which are as under:-
Deposition of P.R. Patil (PW-242)
He was on Immigration duty on 19.01.1993. The relevant entries on the Embarkation Card (X-398) concerning the departure have been marked as Exh. Nos. 1050, 1050-A and 1050-A(1).
Deposition of S.S. Chaudhary (PW-223)
The arrival of the appellant to India from Dubai has been proved by PW-223 who was on Immigration duty on 23.01.1993. The relevant endorsements on the Disembarkation Card (X-349) have been marked as Exh. Nos. 989 and 989A.
Deposition of Subhash Udyawar (PW-441)
PW-441 was an employee of M/s East West Travel and Tours Pvt. Ltd. and has deposed regarding the reservation of flight tickets for the appellant to Dubai at the instance of A-1.
On perusal of the above, it can easily be inferred that:-
(i) The appellant had been to Dubai on 19.01.1993 and returned Bombay on 23.01.1993.
(ii) The departure and arrival details have been further corroborated by PWs-242 and 223.
(iii) The tickets of the appellant were arranged by A-1, who is a co-conspirator and brother of prime accused, Tiger Memon.
Presence of the accused at Waghani Tower
Deposition of Harish Chandra Laxman Surve (PW-108)
311) PW-108 was a watchman at the Waghani Tower who deposed as under:
(i) Tulsiram Dhondu Surve (A-62) and Vijay Goving More (PW-137) were also working alongwith him at Waghani Tower in 1992/1993.
(ii) On 03.02.1993, the said witness was on duty at Waghani Tower.
(iii) He was told by A-62 that a party of the appellant was to arrive from Mhasala in the night.
(iv) At 9.00 p.m., one Maruti Van, one motorcycle and one jeep arrived at

Waghani Tower.
(v) The appellant was present in the aforesaid jeep.
Deposition of Vijay Goving More (PW-137)
PW-137 was a labourer at Waghani Tower who deposed as under:
(i) A-62 and PW-108 were working as watchman at the Tower.
(ii) At 9.30 p.m., a Maruti Car came at Waghani Tower. Three persons were occupying the said car. Sarfaraj Phanse was one of the three. Sarfraj gave a call to A-62 and told him to make arrangements for tea by telling that their persons had arrived.
(iii) One person out of the three, left in the car and returned alongwith nine to ten persons.
(iv) Tiger Memon, Dawood Phanse and others were amongst the said nine persons.
(v) All the persons then left and around 11 p.m., one truck, one tempo and two jeeps arrived at the Tower. The appellant was present in the jeep along with others.
(vi) All the said persons went away after goods were loaded in the Tempo and the Truck.
(vii) In a similar manner, in February, 1993, A-62 told PW-137 that the goods of the appellant were to arrive.
(viii) After 11 p.m., one truck, two jeeps and a tempo arrived at Waghani Tower and the appellant was seated in the jeep.
(ix) Thereafter, unloading of goods from the trucks commenced.
(x) Again, after 4/5 days, A-62 told PW-137 that goods of the appellant were to arrive.
(xi) PW-137 identified the appellant in the court.
312) On perusal of the aforesaid deposition, it is clearly discernible that:
(i) The appellant was present at Waghani Tower when the goods were being loaded and unloaded.
(ii) The deposition of PW-137 also lends credence to the deposition of PW-108 that the appellant was seated in the jeep which came to the Tower filled with the goods.
(iii) The said evidence read with the substantive evidence of abovesaid confessions clearly, beyond all reasonable doubt, proved his fatal presence at the Tower when the arms and ammunitions and explosives smuggled to this country were being unpacked and reloaded.
Other Witnesses:
Deposition of Ravindra Vaskar Sawant (PW-145)
313) PW-145 is a resident of Kanghar and runs a grocery shop and acted as a panch witness.
(i) He saw the powder like substance on the land within the campus of Waghani Tower;
(ii) He also saw the burnt cardboards at the site and their ashes lying nearby;
(iii) The samples of the powder as well as of the said ashes were collected by the police in his presence.

Deposition of Vyankatesh Hirba (PW-588)
He was a police officer attached with the State Intelligence Department, Panvel. He deposed that he went to Waghani Tower and collected samples of earth and ashes from the said place. Panchnama Exh. 660 was prepared by him. The samples were forwarded for examination to FSL, Bombay by Shashikant Chavan (PW-676). The FSL report (Exh. 2154 colly) confirmed the presence of RDX in the samples.
314) A perusal of the entire evidence on record shows that no other hypothesis is possible than to conclude that he willingly participated and assisted Dawood Ibrahim and Tiger Memon in smuggling of large quantity of weapons, ammunitions and explosives of mass destruction which ultimately resulted in huge destruction shocking to the very conscience. If the role of the appellant is seen in the light of his agreement, understanding and his consciousness of the ultimate use of the smuggled arms and ammunitions and explosives, the culpability of the appellant is no less than Tiger Memon. All the other co-accused persons in their confessional statements asserted that the appellant acted not only as a landing agent but he was also aware of the arms and ammunitions and was himself in possession of the same. Further, it has also come in evidence that he was aware of all the activities of Tiger Memon. Even if we consider his age, he has not made

out a case for any leniency in the sentence part.
315) Therefore, in view of the above, we hold that the appellant was actively involved in the conspiracy to cause blasts in Bombay and in consequence of the said involvement he has committed the offences for which he has been charged and we are not inclined to interfere with the conviction and sentence awarded by the Designated Court. Consequently, the appeals are liable to be dismissed.

Criminal Appeal Nos. 653 AND 656 of 2008

Mohd. Moin Faridulla Qureshi (A-43) ... Appellant(s)

Versus

The State of Maharashtra,
through CBI-STF, Mumbai ... Respondent(s)

316) Shri Prakash Sinha, learned counsel for the appellant (A-43) and Mr. Mukul Gupta, learned senior counsel duly assisted by Mr. Satyakam, learned counsel for the respondent (CBI).
317) The instant appeals by Mohd. Moin Faridulla Qureshi (A-43) are directed against the final judgment and order of conviction and sentence dated 04.12.2006 and 24.07.2007 respectively, whereby the appellant (A-43) has been convicted and sentenced to rigorous imprisonment (RI) for life by the Designated Court under TADA for the Bombay Bomb Blast Case, Greater Bombay in B.B.C. No.1/1993.

Charges:
318) A common charge of conspiracy was framed against all the co-conspirators including the appellant. The relevant portion of the said charge is reproduced hereunder:

> "During the period from December, 1992 to April, 1993 at various places in Bombay, District Raigad and District Thane in India and outside India in Dubai (U.A.E.) and Pakistan, entered into a criminal conspiracy and/or were members of the said criminal conspiracy whose object was to commit terrorist acts in India and that you all agreed to commit following illegal acts, namely, to commit terrorist acts with an intent to overawe the Government as by law established, to strike terror in the people, to alienate sections of the people and to adversely affect the harmony amongst different sections of the people, i.e. Hindus and Muslims by using bombs, dynamites, hand grenades and other explosive substances like RDX or inflammable substances or fire-arms like AK-56 rifles, carbines, pistols and other lethal weapons, in such a manner as to cause or as likely to cause death of or injuries to any person or persons, loss of or damage to and disruption of supplies of services essential to the life of the community, and to achieve the objectives of the conspiracy, you all agreed to smuggle fire-arms, ammunitions, detonators, hand grenades and high explosives like RDX into India and to distribute the same amongst yourselves and your men of confidence for the purpose of committing terrorist acts and for the said purpose to conceal and store all these arms, ammunitions and explosives at such safe places and amongst yourselves and with your men of confidence till its use for committing terrorist acts and achieving the objects of criminal conspiracy and to dispose off the same as need arises. To organize training camps in Pakistan and in India to import and undergo weapons training in handling of arms, ammunitions and explosives to commit terrorist acts. To harbour and conceal terrorists/co-conspirators, and also to aid, abet and knowingly facilitate the terrorist acts and/or any act preparatory to the commission of terrorist acts and to render any assistance financial or otherwise for accomplishing the object of the conspiracy to commit terrorist acts, to do and commit any other illegal acts as were necessary for achieving the aforesaid objectives of the criminal conspiracy and that on 12.03.1993 were successful in causing bomb explosions at Stock Exchange Building, Air India Building, Hotel Sea Rock at Bandra, Hotel Centaur at Juhu, Hotel Centaur at Santacruz, Zaveri Bazaar, Katha Bazaar, Century Bazaar at Worli, Petrol Pump

adjoining Shiv Sena Bhavan, Plaza Theatre and in lobbing handgrenades at Macchimar Hindu Colony, Mahim and at Bay-52, Sahar International Airport which left more than 257 persons dead, 713 injured and property worth about Rs.27 crores destroyed, and attempted to cause bomb explosions at Naigaum Cross Road and Dhanji Street, all in the city of Bombay and its suburbs i.e. within Greater Bombay. And thereby committed offences punishable under Section 3(3) of TADA (P) Act, 1987 and Section 120-B of IPC read with Sections 3(2)(i)(ii), 3(3)(4), 5 and 6 of TADA (P) Act, 1987 and read with Sections 302, 307, 326, 324, 427, 435, 436, 201 and 212 of Indian Penal Code and offences under Sections 3 and 7 read with Sections 25 (1A), (1B)(a) of the Arms Act, 1959, Sections 9B (1)(a)(b)(c) of the Explosives Act, 1884, Sections 3, 4(a)(b), 5 and 6 of the Explosive Substances Act, 1908 and Section 4 of the Prevention of Damage to Public Property Act, 1984 and within my cognizance."

In addition to the above-said principal charge of conspiracy, the appellant was also charged on the following counts:

At head Secondly: The appellant in pursuance of the criminal conspiracy abetted and knowingly facilitated acts preparatory to terrorist acts and committed an offence punishable under section 3(3) of TADA by committing the following overt acts:

(a) He received training in handling of arms, ammunitions and explosives at Borghat and Sandheri;

(b) He attended conspiratorial meetings at the residence of Babloo @ Nazir Ahmed Anwar Shaikh and Mobina @ Baya Musa Biwandiwala (A-96) where plans for committing terrorist acts were discussed and chalked out;

(c) He participated in filling and loading of explosives like RDX in various vehicles fitted with time device detonators in the intervening night of 11/12th March, 1993 at Al-Hussaini Building.

At head Thirdly: The appellant, along with other co-accused persons, went to Fishermen’s Colony at Mahim on 12.03.1993 at about 1.45 pm, in a Maruti Van bearing No. MP-13-D-385 and lobbed hand grenades on the hutments causing death of 3 persons, injuring 6 persons and causing loss of property worth Rs. 50,000/- and thereby committed an offence punishable under section 3(2)(i)(ii) of TADA read with Section 149 IPC.

At head Fourthly: The appellant, by doing the aforesaid act, committed an offence punishable under Section 148 IPC.

At head Fifthly: The appellant, by doing the aforesaid act which resulted into death of 3 persons, committed an offence punishable under Section 302 read with Section 149 IPC.

At head Sixthly: The appellant, by doing the aforesaid act which resulted into injuries to 6 persons, committed an offence punishable under Section 307 read with Section 149 IPC.

At head Seventhly: The appellant, by doing the aforesaid act which resulted into several injuries, committed an offence punishable under Section 324 read with Section 149 IPC.

At head Eighthly: The appellant, by doing the aforesaid act which resulted into loss of property worth Rs.50,000/-, committed an offence punishable under Section 436 read with Section 149 IPC.

At head Ninthly: The appellant was in possession of 17 hand-grenades during the period from January, 1993 to 26th April, 1993, which he concealed in the over-head water tank of the toilet of Room No. 27, Chawl No. 22, Transit Camp, Bandra (E), unauthorisedly, in a notified area of Greater Bombay and thereby committed an offence punishable under Section 5 of TADA.

At head Tenthly: The appellant was in possession of the above mentioned 17 hand-grenades with intention to commit terrorist act and thereby committed an offence punishable under Section 6 of TADA.

At head Eleventhly: The appellant, by possessing the above mentioned 17 hand-grenades, has committed an offence punishable under Sections 3 and 7 read with 25(1-A) and 25(1-B) (a) of the Arms Act, 1959.

319) The Designated Court found the appellant guilty on all the charges except charge at head tenthly. The appellant has been convicted and sentenced for the above said charges as under:

Conviction and Sentence:

(i) The appellant has been convicted for the offence of conspiracy punishable under Section 3(3) of TADA and under Section 120-B for the offences described at head firstly and sentenced to RI for life along with a fine of Rs. 25,000/-, in default, to further undergo RI for 6 months. (charge firstly)

(ii) The appellant has also been convicted under Section 3(3) of TADA for commission of acts specified at head secondly and has been sentenced to RI for 12 years along with a fine of Rs. 50,000/-, in default, to further undergo RI for 1 (one) year. (charge secondly)

(iii) The appellant has also been convicted for the commission of offence under Section 3(2)(i)(ii) of TADA read with Section 149 of IPC and has been sentenced to RI for life along with a fine of Rs. 50,000/-, in default, to further undergo RI for a period of 6 months. (charge thirdly)

(iv) The appellant has also been convicted for the commission of offence punishable under Section 148 of IPC and has been sentenced to RI for 3 years. (charge fourthly)

(v) The appellant has also been convicted under Section 302 read with Section 149 of IPC and has been sentenced to RI for life along with a fine of Rs. 25,000/-, in default, to further undergo RI for a period of 6 months. (charge fifthly)

(vi) The appellant has also been convicted under Section 307 read with Section 149 of IPC and has been sentenced to RI for 14 years along with a fine of Rs. 10,000/-, in default, to further undergo RI for a period of 3 (three) months. (charge sixthly)

(vii) The appellant has also been convicted under Section 324 read with Section 149 of IPC and has been sentenced to RI for 2 years. (charge seventhly)

(viii) The appellant has also been convicted under Section 436 read with Section 149 of IPC and has been sentenced to RI for 10 years along with a fine of Rs. 5,000/-, in default, to further undergo RI for a period of 1 (one) month. (charge eighthly)

(ix) The appellant has also been convicted for the commission of offence punishable under Section 5 of TADA and has been sentenced to RI for 10 years along with a fine of Rs. 25,000/-, in default, to further undergo RI for a period of 6 (six) months. (charge ninethly)

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Evidence

320) The evidence against the appellant (A-43) is in the form of:-

(i) confessions made by other co-conspirators; (co-accused);

(ii) testimony of prosecution witnesses; and

(iii) documentary evidence.

Confessional Statements of co-accused:

321) The prosecution pointed out that the involvement of the appellant in committing overt acts is revealed in the confessional statements of several co-accused persons which are summarized as under:

Confessional Statement of Bashir Ahmed Usman Gani Khairulla (A-13)

Confessional statement of A-13 under Section 15 of TADA has been recorded on 16.05.1993 (10:30 hrs.) and 18.05.1993 (17:15 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The facts emerging from the said confession pertaining to the appellant are summarized as follows:

(i) The appellant was present on 7/8.03.1993, along with other co-accused persons, in a flat on the 7th floor of the building on the Hill Road, Bandra behind Bhabha Hospital.
(ii) The appellant, along with other co-accused persons, took oath by placing his hands on Holy Quran that they will take revenge for the atrocities committed on their community and will do Jehad for Islam and they would not disclose anything about this to anyone.
(iii) The appellant, along with A-13 and others, as instructed by Tiger, went to offer Namaz at Bandra Masjid and was told to wait for Tiger's man, who would take him for the next job.
(iv) After offering Namaz, as told, around 1:15 in the night, they were picked up by Tiger's man named Gani and they all left and reached on a hill where they were imparted training by Tiger Memon.
(v) After the training, they came back to Bombay and the appellant got down at Kala Nagar.
(vi) The appellant, along with other co-accused persons, attended a conspiratorial meeting on 10.03.1993 at a flat on Hill Road, Bandra. All the co-accused persons were given Rs. 5,000/- for giving the same at their homes in order to celebrate Eid and he further told them not to spend the money on themselves.
(vii) The apellant was present inside the garage at Al-Hussaini Building compound in the night of 11/12.03.1993 when black chemical was being filled in vehicles.
(viii) In the morning of 12.03.1993, the appellant and other co-accused persons were present at Al-Hussaini building where Javed gave them Rs. 5,000/-.
(ix) As told by Javed, the appellant, along with Salim, Bashir Khairulla, Mehmood, Feroz, Zakir and Abdul Akhtar went to throw the handgrenades at Mahim slope cause-way.
(x) The apellant, along with other co-accused, got down from the car and lobbed hand grenades at Mahim Slope.
(xi) The appellant or Mahmood was having the bag containing hand grenades.

322) A perusal of the confession of A-13 shows that the appellant actively participated in the entire conspiracy to commit terrorist acts. He committed all possible acts, viz., taking oath to commit jehad; received training in handling of arms and ammunitions and explosives; attended conspiratorial meeting where plans were discussed; was present inside the garage of Al-Hussaini building when black chemical was being filled in vehicles and lobbed hand grenades at fishermen's colony at Mahim.

Confessional Statement of Mohd. Iqbal Mohd. Yusuf Shaikh (A-23)

Confessional statement of A-23 under Section 15 of TADA has been recorded on 20.05.1993 (10:00 hrs.) and 22.05.1993 (10:00 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone-III, Bombay. The facts emerging from the said confession pertaining to the appellant are summarized as follows:

(i) The appellant, along with others, took oath to do Jehad in order to take revenge for the atrocities on their community and not to disclose anything to anyone at a flat behind Bhaba Hospital.
(ii) The appellant, along with others, as instructed by Tiger Memon, went to Bandra and waited near Badi Masjid from where they were picked up around 12:30-1:00 a.m. in the night, by a man of Tiger who had come in a sky blue coloured Jeep.
(iii) Thereafter, they reached on a hill where they were imparted training

in throwing handgrenades and firing with AK-56 by Tiger Memon.

(iv) The appellant and others came back to Bombay after the training. The appellant, along with A-23, got down from the vehicle at the MHADA office.

(v) Two days thereafter, the appellant attended a meeting in a Flat at Bandra where all the members discussed their plans and Tiger distributed Rs. 5,000/- to each one of them for Eid celebrations.

(vi) He participated in the filling of RDX in the vehicles in the garage at Tiger's residence.

(vii) The appellant was present in Tiger's house at Mahim and received hand grenades from Javed and Usman.

(viii) The appellant went to Bangalore with Mehmud and A-23 in order to avoid arrest.

(ix) The appellant, after returning from Bangalore, went to his country.

The prosecution vehemently submitted that the confession of A-23 duly corroborates the role played by the appellant in the entire conspiracy. It is clear that the appellant committed all possible overt acts in order to commit terrorist acts. It is also clear from his confession that he was present inside the garage of Al-Hussaini building and participated in the filling of RDX in vehicles which were later planted as bombs at various places.

Confessional Statement of Zakir Hussain Noor Mohd. Shaikh (A-32)

Confessional statement of A-32 under Section 15 of TADA has been recorded on 16.05.1993 (11:25 hrs.) and 19.05.1993 (17:30 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The facts emerging from the said confession, with reference to the appellant, are summarised hereunder:

(i) The appellant attended the conspiratorial meeting on 10.03.1993 at Bandra where Tiger Memon formed groups. They were directed to go to the godown of Bharat Petroleum Company at Chembur in order to throw hand grenades. Next day, PW-2 took all of us to the spot in a commander Jeep and did survey. All the people of our group were in the Jeep.

(ii) He was present in the night intervening 11/12 March, 1993 at the Al-Hussaini Building.

(iii) He was present in the flat of Tiger where he was given hand grenades by Javed and Usman.

(iv) Javed gave Rs. 5,000/- to each one of them and told them to leave for their mission at 2:30 p.m.

(v) The appellant, along with Zakir Hussain, Mehmood, Abdul Akhtar, Saleem Dandekar and Feroz went to Mahim slope Koliwada colony around 2:30 p.m. in a blue Maruti and lobbed handgrenades.

Upon perusal of the confession of A-32, it is clear that the same corroborates with the fact that the appellant attended conspiratorial meeting; was present at Al-Hussaini building in the intervening night of 11/12.03.1993; lobbed hand grenades at fishermen's colony. The appellant also conducted survey along with PW-2 and other co-accused persons.

Confessional Statement of Abdul Akhtar Khan (A-36)

Confessional statement of A-36 under Section 15 of TADA has been recorded on 19.05.1993 (17:40 hrs.) and 21.05.1993 (18:20 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The confession of A-36 reveals the following facts:

(i) The appellant, along with others, was loading RDX in the vehicles in the night intervening 11/12.03.1993 at Al-Hussaini Building.

(ii) Javed gave Rs. 5000/- to each one of them.

(iii) The appellant, along with others, was given hand grenades by Javed and Usman.

(iv) The appellant and Zakir brought a bag full of hand grenades.

(v) Javed also gave 5-6 grenades to others who were present there which they put in their bag which was being carried by the appellant and Zakir.

(vi) The appellant, along with others, went to Mahim slope-way and threw grenades on the hutments.

It can easily be inferred that the confession of A-36 corroborates with the

fact that appellant filled RDX in vehicles and he along with other co-accused persons lobbed hand grenades at Fishermen's colony

Confessional Statement of Akram Amani Malik (A-39)

Confessional statement of A-39 under Section 15 of TADA has been recorded on 19.04.1993 (22:30 hrs.) and 23.04.1993 (20:50 hrs.) by Mr. P.D. Pawar (PW-185), the then DCP, Zone V, Bombay. The facts emerging from the said confession, pertaining to the appellant, are summarised as under:

(i) On 10.03.1993, the appellant attended a meeting at Bandra.
(ii) The appellant and others were asked by Tiger Memon to do some work and that they will be given Rs. 5,000/- each.
(iii) The appellant, along with PW-2 and others, went to survey Chembur refinery.
(iv) The appellant, along with co-accused, went in a Maruti Van and threw hand grenades.

The confession of A-39 corroborates the abovesaid confessions and in particular that the appellant attended conspiratorial meeting; conducted survey of the target; travelled along with co-accused persons and lobbed hand grenades.

Confessional Statement of Nasim Ashraf Sherali Barmare (A-49)

Confessional statement of A-49 under Section 15 of TADA has been recorded on 16.05.1993 (09:30 hrs.) and 18.05.1993 by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The confession of A-49 corroborates with the fact that the appellant filled black soap (RDX) mixed with steel scrap jointly with other co-accused and was present at Al-Hussaini building till morning.

Confessional Statement of Salim Rahim Shaikh (A-52)

Confessional statement of A-52 under Section 15 of TADA has been recorded on 15.04.1993 and 18.04.1993 by Shri P.D. Pawar (PW-185), the then DCP, Zone V, Bombay. The facts emerging from the said confession, pertaining to the appellant, are summarized as under:

(i) The appellant was present in the meeting held at Tiger's flat where he formed groups.
(ii) The appellant, A-52 himself, Alam, Zakir, Bashir and Aslam were in one group.
(iii) On 11.03.1993, the appellant was present at the residence of Tiger Memon along with other accused persons.
(iv) The appellant also filled 'black soap' from the soap boxes kept in the garage.
(v) All the persons including the appellant, who were filling the black soap wore gloves in their hands.
(vi) He, along with the accused and others, went in the Maruti Car to Mahim Slope, Koliwada and threw hand grenades causing bomb blast.

The confession of A-52 also corroborates the fact that the appellant attended conspiratorial meeting and that he filled RDX in vehicles in the night intervening 11/12.03.1993 and also lobbed hand grenades at fishermen's colony.

Confessional Statement of Shaikh Ali Shaikh Umar (A-57)

Confessional statement of A-57 under Section 15 of TADA has been recorded on 19.04.1993 (12:00 Hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The facts emerging from the said confession pertaining to the appellant are summarized as under:

(i) The appellant, along with others, was present in the flat at Bandra when Tiger Memon gave lecture about the loss suffered by Muslim community and also that they were doing this for their community and gave Rs. 5,000/- to everyone present there.
(ii) The appellant participated in filling of RDX in vehicles and putting of iron pieces in it.
(iii) The appellant was asked by Anwar to take rest from work of filling RDX.
(iv) In the morning, the appellant carried the rifle and kept it in the Maruti Car No. MFC 1972.

The confession of A-57 corroborates the fact that the appellant attended meeting where Tiger Memon talked about taking revenge and filled RDX in vehicles which were planted as bombs at various places.

Confessional Statement of Nasir Abdul Kadar Kewal @ Nasir Dhakla (A-64)

Confessional statement of A-64 under Section 15 of TADA has been recorded on 22.01.1995 (9:15 pm.) and 24.01.1995 (9.45 am) by Shri HC Singh (PW-474), the then SP, CBI/SPE/STF, New Delhi. The confession of A-64 corroborates with the fact that the appellant was present at Al-Hussaini building in the night intervening 11/12.03.1993.

323) Upon perusal of the said confessions of co-accused persons, it is thus established that the appellant:-

(i) participated in training of handling of arms and ammunitions and explosives at Sandheri and Borghat;
(ii) participated in conspiratorial meeting;
(iii) took oath that he will do Jehad;
(iv) conducted survey of targets along with PW-2 and other co-accused;
(v) filled RDX and iron scraps in vehicles;
(vi) lobbed hand grenades at fishermen's colony;
(vii) after committing such a heinous crime fled in order to avoid his arrest.

Deposition of Prosecution Witnesses:

324) Apart from the aforesaid evidence, the involvement and the role of the appellant in the conspiracy, as stated above, is disclosed by the deposition of various prosecution witnesses which are as under:

Deposition of Mohd. Usman Jan Khan (PW-2) (Approver)

His deposition reveals about the involvement of A-43 in the conspiracy. The relevant material in his evidence is as under:-

(i) PW-2 stated that he knew Moin Faridulla Quereshi as 'Moin'.

(ii) He identified the appellant before the Court.

(iii) The appellant attended the conspiratorial meeting at Shakeel's residence on 07.03.1993.

(iv) Tiger Memon told PW-2 to show the Chembur Refinery to the appellant and others.

(v) The appellant was also present in Tiger's flat at Al-Hussaini building in the night of 11/12.03.1993.

(vi) He was actively involved in filling of RDX in the dickey of motor vehicles on the night of 11/12.03.1993.

(vii) Javed Chikna gave 4 hand grenades to A-43 and others in order to throw the same at Fishermen's Colony at Mahim.

The above deposition of the approver duly corroborates the confessions of the co-accused and thus establishes the fact that the appellant attended conspiratorial meetings, he was present at Al-Hussaini building in the night intervening 11/12.03.1993 and filled RDX in vehicles and that he was given hand grenades to be lobbed at Fishermen's colony. PW-2 duly corroborates the confession of co-accused in material respects.

Deposition of Laxmikant Ramachandra Patil (PW-5)

PW-5 is a resident of the Fishermen's Colony and is an eye witness to the incident. He had witnessed the incident while he was waiting on the road which is summarized as under:

(i) He deposed that 5-6 persons got down from a blue coloured Maruti Van and threw green coloured things, which could be held in the hand, towards the colony.

(ii) He identified the appellant in court.

(iii) He participated in the identification parade dated 15.05.1993 conducted by Moreshwar Thakur (PW-469) Special Executive Magistrate at Mahim Police Station and he also identified the appellant.

(iv) On 13.03.1993, in the police station, he also identified the vehicle No. MP-13-D-385 as the car in which the appellant came to Mahim slope in order to throw hand grenades.

Deposition of Santosh Patil (PW-6)

PW-6 is a resident of Mahim Fishermen's Colony at Mahim. He deposed that he witnessed the incident while he was waiting near the Municipal School at Mahim slope. He deposed as under:

(i) 6 persons came in a blue Maruti Van to Mahim Machhimar colony and the number of the said vehicle was MP 385 and threw something in the direction of the 'Zopadpatty' which caused explosions.

(ii) He identified the appellant before the court to be the person who lobbed the hand grenades.

(iii) On 10.04.1993, he identified the blue Maruti Van at the Mahim Police Station. The Van was bearing the Reg. No. MP 13 D-385.

(iv) He also identified the appellant in the identification parade dated 15.05.1993 (Exhibit 1515) conducted by Special Executive Magistrate (PW-469) at Mahim Police Station.

Deposition of Shashikant Shetty (PW-13)

PW-13 is a resident of Mahim Fishermen's Colony at Mahim. He is an eye witness to the incident. He deposed as under:

(i) He witnessed a part of the incident as soon as he came out of his house after hearing the sound of explosions.

(ii) He saw 4-5 people getting down from the Van and throwing something on the 'basti' which resulted in explosions.

(iii) PW 13 identified the appellant in Court.

(iv) PW-13 participated in the identification parade dated 15.05.1993 (Exhibit 1515) conducted by Special Executive Magistrate (PW-469) at Mahim police station and identified all the accused including the appellant.

(v) PW-13 identified the Maruti Van in which the appellant along with co-accused persons came to Mahim Machhimar Colony as MP-D-13-385.

(vi) PW 13 lodged a First Information Report (FIR) in respect of the explosions at Mahim Fishermen's colony.

Upon perusal of the aforesaid depositions of PWs 5, 6 and 13, the eye witnesses to the said incident, it is established that the appellant lobbed hand grenades and caused explosions. They further identified the Maruti van bearing number MP-D-13-385 as the vehicle in which the appellant came along with other co-accused and, thereafter, fled away after lobbing the hand grenades.

Investigation, Recoveries and Reports:

325) The aforesaid eye-witnesses viz., PWs-5, 6 and 13 have duly identified the appellant in the TIP dated 15.05.1993 conducted by Shri Moreshwar Thakur (PW-469) for which memorandum panchnama marked as Exh. 1515 was prepared.

326) On 12.03.1993, Shantaram Gangaram Hire (PW-562), Police Officer, visited the blast site i.e., Fishermen's colony at Mahim and prepared spot panchnama in the presence of panch witnesses, viz., Dayaram Timbak Akare and Mahendra Sadanand Mehre. PW-562, in the presence of Tamore (PW-330) and experts collected the articles from the blast site vide Panchnama Exh. No. 1221 which were sent to the Forensic Science Laboratory ("FSL") for opinion. The FSL Report Exh. Nos. 1943, 1943-A(i) and 1943-A(ii) proves the remnants to be explosives and part of hand grenades.

327) On 26.04.1993, the appellant, in the presence of panch witnesses, viz., Eknath Jadhav (PW-606) and Krishnanad Alwin (PW-41), made a disclosure to the police for which disclousure Panchnama Exhibit 133 was prepared, and thereafter, he led the police party and the panchas and got recovered 17 hand grenades (marked as Art. 54(xvii) colly) which he took out from a water tank and the same were seized by the police vide seizure Panchnama Exhibit 134.

328) The seized articles were sent to FSL for opinion vide Exhibit 2439 and the FSL Report (Exhibit 2439-A) confirms the articles to contain Penta

Crythritol Tetra Nitrate (PENT).

Evidence regarding injured victims and deceased:

329) It is seen from the records that in July, 1993, Achyut Shamrao Pawal (PW-542), Police Inspector, collected the injury certificates of injured persons, namely, Mr. Gurudutt Agaskar, Ms. Rajashri Agaskar and Ms. Sheetal Keni from Bhaba Hospital which amply prove that they sustained injuries during the blast. Injured Shashikant Shetty (PW-13) and Sheetal Keni (PW-412) also proved to have sustained injuries during the blast. Dr. Wadekar (PW-641) and Dr. Krishna Kumar (PW-640) were the doctors who have proved the injury certificates issued to PW-13 and PW-412 respectively.

330) Gajanan Tare (PW-413) (husband of the deceased Gulab Tare) and Karande (PW-414) (nephew of the deceased Hira Dhondu Sawant) claimants of two bodies, have proved the death of Mrs. Gulab Tare (wife of PW-413) and Smt. Hira Dhondu Sawant (PW 414's aunt) in the said incident. PW-482 and PW-480 have established the cause of death to be the injuries received on 12.03.1993. Achyut Shamrao Pawal (PW-542) also proved the death of 3 persons at Fishermen's Colony in the said incident.

Vehicle used for committing the act:

331) It is seen from the materials that the said Maruti Van in which A-13, A-32, A-36, A-39, A-43 and Mehboob Liyaqat Khan (AA) were seated was arranged by Suleman Lakdawala (PW-365) at the behest of Mohd. Shafi Jariwala (AA). This has also been proved by the said witness. Further, the depositions of Kailash Govind Rao Baheti (PW-342) and Shakeel Suleman Hasham (PW-366) are pertinent as it complete the link relating to purchase/arrangement of the said Maruti Van used in the incident.

Deposition of Kailash Govind Rao Baheti (PW-342)

He deposed as follows:-

> "On 18.01.1993 I had received a telephone call given by Shakil Hasham from Bombay. Shakil requested me to book one red coloured Maruti Van in the name of Asif Darvesh resident of M.G. Road, Indore and another new Maruti Van of blue coloured in the name of Shri Kasam Ahmed residing at Indira Nagar, Ujjain. He also requested me to register both the Maruti Van at Indore and send the same to Bombay. He also told me that the payments of the same would be made at Bombay to the driver. I quoted a price of Rs.1,69,000/- per vehicle inclusive of registration and transport charges. I was having red colour Maruti Van brought by me from M/s Bhatia & Company, Gurgaon, Haryana and blue colour Maruti Van brought from Vipul Motors, Faridabad, Haryana, in my stock. I had brought both the said vehicles by making advance payment. After receipt of booking from Shakil Hasham for red and blue coloured brand new Maruti Vans, I informed the details of the purchasers to M/s Bhatia Company and M/s Vipul Motors. After receipt of the said letters and bills from both the said companies in the name of purchasers who wanted red and blue Maruti Vans I sent papers of both the Vans for registration to RTO. The blue coloured Maruti Van was registered in the name of Kasam Ahmed at Ujjain RTO. The blue coloured Maruti Van could not be registered at Indore due to lack of E-Form necessary for registration. Thereafter, I sent both the said Vans to Bombay to Shakil Hasham. Shakil Hasham received the delivery and paid Rs.3,38,000/- to my drivers. My drivers gave the said amount to me. I made the necessary entries in my office record for sending the said Vans to Bombay to Shakil Hasham after purchasing the same for the parties told by him. The RTO Authority at Ujjain had given registration Number MP-13-D-0385 to "blue coloured Maruti Van. Today I am not remembering the engine number and chassis number of the said Maruti Van.""

Deposition of Shakeel Suleman Hasham (PW-366)

In his deposition, he deposed that he had asked PW-342 to arrange for two Maruti Vans (red and blue colour) in February, 1993. Both the vans were purchased in Madhya Pradesh and the blue Maruti Van was registered in Ujjain with the registration number MP-13-D-0385. PW-366 further deposed as under:

> "In the same month (February 1993) I had also arranged for one blue coloured and another red coloured Maruti Vans also registered at Madhya Pradesh for Suleman Lakdawala. The said vehicles were

registered at Madhya Pradesh Indore in the name of the purchasers given to me by Suleman Lakdawala. I had given the work of registration to one Kailash baheti of Indore. Both the said vans were insured by Insurance Agent Rakesh Tiwari before giving the same to Suleman Lakdawala. Both the said vehicles had arrived from Indore. I had sent the same to the Petrol pump of Suleman and asked him to take the delivery from the said drivers who had brought the delivery of the said vehicles. Accordingly he took the delivery by making payment to the drivers."

It is relevant to note that this number and the said blue Maruti Van has been identified by PWs-5, 6 and 13 in their depositions as the vehicle which was involved in the said incident at Fishermen's Colony. Thus, PW-342, therefore, corroborates the deposition of PW-366 in that both the Vans were purchased in Madhya Pradesh and the blue Maruti Van was registered in Ujjain and was given registration number bearing MP-13-D-0385.

332) Further, the deposition of Mukhtar Ahmed (PW-281) reveals that the cavity was prepared by him in the said Maruti Van at the behest of Mohd. Shafi Jariwala (AA). This further corroborates the fact that it is the same vehicle which was used in the Mahim Causeway incident.

333) It is contended on behalf of the appellant that 3 eye witnesses viz., Ashok Vichare (PW-104), Harish Chandra Pawar (PW-105) and Rajaram Kadam (PW-106) have deposed about the incident of training which took place at Sandheri but they have not identified the appellant and hence his participation in the training programme cannot be established. It is brought to our notice by the CBI that the confessions of the co-accused viz. A-13 and A-23, establish the involvement and participation of the appellant in the training programme. Even if the above witnesses have not identified that does not cause any dent on the prosecution case as sufficient evidence has been placed on record by the prosecution to establish the presence and participation of the appellant at Sandheri and Borghat.

Juvenile Issue:

334) It is contended on behalf of the appellant that he was 17 years and 3 months old on the date of commission of offence and his case ought to have been dealt under the Juvenile Justice (Care & Protection of Children) Act, 2000 (in short 'JJ Act') and the provisions of TADA are inapplicable to his case and the learned Designated Court erred in negating the said contention. Before dealing with this contention, it would be appropriate to first deal with the law on the subject:

"Juvenile Justice (Care & Protection of Children) Act, 2000

Preamble:

An act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their need, and by adopting a child friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation".

Section 1 (4) of the JJ Act was brought into the statute book w.e.f. 22.08.2006 which reads as under:-

"Notwithstanding anything contained in any other law for the time being in force, the provisions of this act shall apply to all cases involving detention, prosecution, penalty or sentence of imprisonment of juveniles in conflict with law under any such law"

Section 2 (k) defines 'juvenile' or 'child' means a person who has not completed eighteen years of age.

Section 2 (l) defines 'juvenile in conflict with law' means a juvenile who is alleged to have committed an offence and has not completed eighteen years of age as on the date of commission of such offence.

335) Section 15 deals with the Order that may be passed regarding juvenile which is as under:-

"(1) Where a Board is satisfied on inquiry that a juvenile has

committed an offence, then notwithstanding anything to the contrary contained in any other law for the time being inforce, the Board may, if it so thinks, fit-

(g) make an order directing the juvenile to be sent to a special home- (before the amendment dated 22-8-2006)

(i) in the case of juvenile, over seventeen years but less than eighteen years of age for a period of not less than two years;

(ii) in case of any other juvenile for the period until he ceases to be a juvenile"

336) Section 16 deals with the order that may not be passed against Juvenile which is as under:-

"(1) Nothwithstanding anything to the contrary contained in any law for the time being in force no juvenile in conflict with law shall be sentenced to death (or life imprisonment) or committed to prison in default of payment of fine or in default of furnishing security:

Provided that where a juvenile who has attained the age of sixteen years has committed an offence and the board is satisfied that the offence committed is so serious in nature or that his conduct and behaviour have been such that it would not be in his interest or in the interest of other juveniles in a special home to send him to such special home and that none of the other measures provided under this act is suitable or sufficient, the board may order the juvenile in conflict with law to be kept in such safety and in such manner as it thinks fit and shall report the case for the order of the State Government.

xxxxx"

337) Section 28 of the JJ Act deals with Alternative Punishment which is as under:-

"Where an act or omission constitute an offence punishable under this act and also under any other Central or State act, then notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offences shall be liable to punishment only under such act as provides for punishment which is greater in degree.

In the same light if some of the provisions of the THE TERRORIST AND DISRUPTIVE ACTIVITIES ACT, 1987 may be considered which was also a special act to deal with extraordinary circumstances "An act to make special provisions for the prevention of, and for coping with terrorist and disruptive activities and for matters connected therewith or incidental thereto."

338) Overriding Effect: Section 25 of TADA
"The provisions of this Act or any rule made thereunder or any order made under any such rule shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this act or in any instrument having effect by virtue of any enactment other than this Act."

Whether Juvenile Justice Act, 2000 prevails over TADA Act, 1987:

TADA vs JJ ACT:

339) The question does arise as to whether the provisions of JJ Act as well as of TADA provide for over-riding effect on any other law for the time being in force; and as to whether the provisions of JJ Act would be applicable in case of TADA for the reason that this Court in Hari Ram vs. State of Rajasthan & Anr., (2009) 13 SCC 211, considered the definition of "juvenile" given under Section 2 (k) & (l) for offences committed prior to 01.04.2001 when the JJ Act came into force and held that by virtue of the amendment introduced in Section 20 of the JJ Act, particularly, putting the proviso and explanation to Section 20 of the Act made explicit that in all pending cases including trial, revision, appeal and any other criminal proceedings in respect of a juvenile in conflict with law, the JJ Act would apply retrospectively as if the said provisions had been in force when the alleged offence was committed. More so, Section 7-A of the JJ Act made it clear that the issue of juvenile can be raised at any stage of the proceeding and even if the accused ceased to be juvenile on or before the commencement of the JJ Act. Thus, any person who was below 18 years of age on the date of commission of offence, even prior to 01.04.2001 would be treated as juvenile even if the claim of the juvenility is raised after attaining the age of 18 years on or before the commencement of the Act. The Court further held that in borderline cases, the benefit may be given to the accused as the very Scheme behind such legislation is rehabilitatory so as to prevent such offenders from becoming hardened criminals. Under such a statute, the court has responsibility to see that punishment serves social justice which is the validation of deprivation of citizen's liberty. Correctional treatment with a rehabilitative orientation may be an imperative of modern penology. Such values may find their roots under Article 19 of the Constitution which itself sanctions deprivation of freedoms provided they render a reasonable service to social defence, public order and security of the State. The Court has categorically held that the JJ Act applies retrospectively and a person can apply even where the criminal proceedings have attained finality. The 1986 Act was subsequently repealed by Juvenile Justice (Care and Protection of Children) Act, 2000. On 22.03.2006, Section 2(1) of the Act was amended stating that "Juvenile in conflict with law" means juvenile who is alleged to have committed an offence and has not completed 18 years of age as on the date of commission of such offence. The Juvenile Justice (Care and Protection of Children) Rules 2007 (hereinafter referred to as '2000 Rules') were brought into force on 26th October 2007. As per Rule 97(2) all the cases pending which have not received finality will be dealt with and disposed of in terms of the provisions of the 2000 Act as amended on 22.08.2006 and 2007 Rules. This view stands approved and affirmed by a larger bench judgment on reference in Abuzar Hossain @ Gulam Hossain vs. State of West Bengal (2012) 10 SCC 489.

340) Admittedly, the TADA Act 1985/1987 and JJ Act, 1986/2000, both contained provisions providing over-riding effect on any other law for the time being in force.

341) A statute must be interpreted having regard to the purport and object of the Act. The doctrine of purposive construction must be resorted to. It would not be permissible for the court to construe the provisions in such a manner which would destroy the very purpose for which the same was enacted. The principles in regard to the approach of the Court in interpreting the provisions of a statute with the change in the societal condition must also be borne in mind. The rules of purposive construction have to be resorted to which would require the construction of the Act in such a manner so as to see that the object of the Act fulfilled; which in turn would lead the beneficiary under the statutory scheme to fulfill its constitutional obligations. It is the duty of the court to adopt a harmonious construction by which both the provisions remain operative. (Vide: Cantonment Board, Mhow & Anr. vs. M.P. State Road Transport Corpn., AIR 1997 SC 2013; Bharat Petroleum Corporation Ltd. vs. Maddula Ratnavalli & Ors., (2007) 6 SCC 81; and Krishna Kumar Birla vs. Rajendra Singh Lodha & Ors., (2008) 4 SCC 300).

342) Where two statutes provide for overriding effect on the other law for the time being in force and the court has to examine which one of them must prevail, the court has to examine the issue considering the following two basic principles of statutory interpretation:

1. leges posteriores priores conterarias abrogant (later laws abrogate earlier contrary laws).

2. generalia specialibus non derogant (a general provision does not derogate from a special one.)

343) The principle that the latter Act would prevail the earlier Act has consistently been held to be subject to the exception that a general provision does not derogate from a special one. It means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in the earlier Act, it would be presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one.

344) The basic rule that general provisions should yield to the specific provisions is based on the principle that if two directions are issued by the competent authority, one covering a large number of matters in general and another to only some of them, his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier directions must be given effect to.

345) It is a settled legal proposition that while passing a special Act, the legislature devotes its entire consideration to a peculiar subject. Therefore, when a general Act is subsequently passed, it is logical to presume that the legislature has not repealed or modified the former special Act unless an inference may be drawn from the language of the special Act itself.

346) In order to determine whether a statute is special or general one, the court has to take into consideration the principal subject matter of the statute and the particular perspective for the reason that for certain purposes an Act may be general and for certain other purposes it may be special and such a distinction cannot be blurred.

347) Thus, where there is inconsistency between the provisions of two statutes and both can be regarded as special in nature, the conflict has to be resolved by reference to the purpose and policy underlying the two enactments and the clear intendment of the legislature conveyed by the language of the relevant provisions therein. (Vide: Shri Ram Narain vs. The Simla Banking and Industrial Co. Ltd., AIR 1956 SC 614; J.K. Cotton Spinning & Weaving Mills Co. Ltd. vs. State of Uttar Pradesh, AIR 1960 SC 1170: Kumaon Motor Owners' Union Ltd. & Anr. vs. State of Uttar Pradesh, AIR 1966 SC 785; Shri Sarwan Singh vs. Shri Kasturi Lal, (1977) 1 SCC 750; The U.P. State Electricity Board vs. Hari Shanker Jain & Ors, (1978) 4 SCC 16; The Life Insurance Corporation of India vs. D.J. Bahadur, AIR 1980 SC 2181; Ashoka Marketing Ltd. and Anr. vs. Punjab National Bank & Ors., AIR 1991 SC 855; and T.M.A. Pai Foundation and Ors. vs. State of Karnataka and Ors., AIR 2003 SC 355).

348) In Punjab State Electricity Board vs. Bassi Cold Storage, Khara and Anr., AIR 1994 SC 2544, the question was whether Arbitration would be applicable to all disputes under the Indian Electricity Act, 1910. This Court after considering the relevant provisions of the Act 1910 held:

> "If the legislature while putting the Act in the statute book would have required that all the disputes between the parties should be subject-matter of arbitration, there would have been no necessity to mention about some disputes or difference specifically in the aforesaid section as being remediable by arbitration. This clearly shows, according to us, that the legislature did require that the matters enumerated in the Act alone should go for arbitration, and no others."

(See also: Mohan Karan vs. State of U.P. and Anr., AIR 1998 SC 1601).

349) In RBI vs. Peerless General Finance and Investment Company Ltd., and Ors. (1987) 1 SCC 424, this Court highlighted the importance of the rule of contextual interpretation and held:

"Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. ....No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

350) In Employees Provident Fund Commr. vs. Official Liquidator, AIR 2012 SC 11, the question arose as to whether priority given to the dues payable by an employer under Section 11 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, is subject to Section 529-A of the Companies Act, 1956 in terms of which the workmen's dues and debts due to secured creditors are required to be paid in priority to all other debts in view of the non-obstante clause contained in the subsequent legislation, i.e. Section 529A(1) of the Companies Act would prevail over similar clause contained in earlier legislation, i.e. Section 11(2) of the EPF Act. The Court made reference to provisions of both enactments, and placing reliance on earlier judgment in UCO Bank vs. Official Liquidator, High Court, Bombay & Anr. (1994) 5 SCC 1, A.P. State Financial Corpn. vs. Official Liquidator, (2000) 7 SCC 291, Textile Labour Assn. and Anr. vs. Official Liquidator and Another, (2004) 9 SCC 741; Maharashtra State Coop. Bank Ltd. vs. Assistant Provident Fund Commr. And Ors. (2009) 10 SCC 123; observed:

"The EPF Act is a social welfare legislation intended to protect the interest of a weaker section of the society i.e. the workers employed in factories and other establishments, who have made significant contribution in economic growth of the country. The workers and other employees provide services of different kinds and ensure continuous production of goods, which are made available to the society at large. Therefore, a legislation made for their benefit must receive a liberal and purposive interpretation keeping in view the directive principles of State policy contained in Articles 38 and 43 of the Constitution."

This Court held that the non-obstante nature of a provision although may be of wide amplitude, the interpretative process thereof must be kept confined to the legislative policy. The non-obstante clause must be given effect to, to the extent the legislature intended and not beyond the same.

351) In A.P. State Financial Corpn. (supra), this Court held that right to sell the property by Financial Corporation under Section 29 of the State Financial Corporations Act, 1951 will be subject to the non obstante clause contained in Section 529-A of the Companies Act and observed:

"10. The Act of 1951 is a special Act for grant of financial assistance to industrial concerns with a view to boost up industrialisation and also recovery of such financial assistance if it becomes bad and similarly the Companies Act deals with companies including winding up of such companies. The proviso to sub-section (1) of Section 529 and Section 529-A being a subsequent enactment, the non obstante clause in Section 529-A prevails over Section 29 of the Act of 1951 in view of the settled position of law. We are, therefore, of the opinion that the above proviso to sub-section (1) of Section 529 and Section 529-A will control Section 29 of the Act of 1951. In other words the statutory right to sell the property under Section 29 of the Act of 1951 has to be exercised with the rights of pari passu charge to the workmen created by the proviso to Section 529 of the Companies Act. Under the proviso to sub-section (1) of Section 529, the liquidator shall be entitled to represent the workmen and force (sic enforce) the above pari passu charge. Therefore, the Company Court was fully justified in imposing the above conditions to enable the Official Liquidator to discharge his function properly under the supervision of the Company Court as the new Section 529-A of the Companies Act confers upon a Company Court the duty to ensure that the workmen's dues are paid in priority to all other debts in accordance with the provisions of the above section. The legislature has amended the Companies Act in 1985 with a social purpose viz. to protect the

dues of the workmen. If conditions are not imposed to protect the right of the workmen there is every possibility that the secured creditor may frustrate the above pari passu right of the workmen."

Child Rights:

352) The Geneva declaration of 1924 on the rights of the child adopted by the League of Nations on 26th September, 1924 provided that mankind owe to the child the best that it has to give, declare and accept it as their duty. Thus, the child must be given the means requisite for its normal development, both materially and spirituality. A hungry child must be fed and further recognised various child rights included that the delinquent child must be reclaimed.

353) The declaration of the right of the child adopted by the United Nations on 20th November, 1959, provides that the child by reason of his physical and mental immaturity needs special safeguards and care including his appropriate legal protection before as well as after birth.

354) The United Nations adopted Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) dated November 29, 1985. India is a signatory to the Declaration and effectively participated in bringing the Declaration into force.

355) The Rules guide the States to protect children's rights and respect their needs during the development of separate and particular system of juvenile justice. It is also in favour of meeting the best interests of the child while conducting any proceedings before any authority. If children are processed through the criminal justice system, it results in the stigma of criminality and this in fact amplifies criminality of the child. The Rules say that depriving a child/juvenile of his liberty should be used as the last resort and that too, for the shortest period. These Rules direct the Juvenile Justice System to be fair and humane, emphasising the well-being of the child. Besides that, the importance of rehabilitation is also stressed demanding necessary assistance in the form of education, employment or shelter to be given to the child. The Juvenile Justice Act 1986 was enacted in pursuance of the Constitutional obligations cast under Article 39 clause (f) of the Constitution of India as well as of commitment to the aforesaid International Conventions. The Convention postulates that State Parties recognise that every child has the inherent right to life. State Parties shall ensure that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age.

356) Aims of juvenile justice provide that the juvenile Justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

357) The said Rules further lays down that restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum; and deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response.

358) The Statement of Objects and Reasons of JJ Act reveal that the Act is in consonance with the provisions under Article 21 of the Constitution read with clause (f) of Article 39 of the Constitution which provides that the State shall direct its policy towards securing the children or give opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and the childhood and youth are protected against exploitation and against moral and material abandonment.

359) The children if come in contact with hardened criminals in jail, it would have the effect of dwarfing the development of the child, exposing him to baneful influences, coarsening his conscience and alienating him from the society.

(Vide: Sheela Barse & Anr. vs. Union of India & Ors., AIR 1986 SCC 1773, Gaurav Jain vs. UOI and Ors., AIR 1997 SC 3021; Arnit Das vs. State of Bihar, AIR 2000 SC 2264; and Pratap Singh vs. State of Jharkhand and Anr., AIR 2005 SC 2731)

360) Therefore, there can be no doubt that the J & J Act is beneficial in

nature i.e. socially oriented legislation. In case the provisions are not complied with, the object of its enactment would be frustrated.

361) Section 6 of JJ Act contains a non-obstante clause giving overriding effect to any other law for the time being in force and provides that Juvenile Justice Board, where it has been constituted, shall "have power to deal exclusively" with all proceedings under this Act relating to juvenile in conflict with law. Section 18(i) further provides that notwithstanding contained in Section 223 of the Code or any other law for the time being in force, no juvenile shall be charged with or tried for any offence together with a person who is not a juvenile. More so, non-obstante clause contained in various provisions thereof, particularly, Sections 15, 16, 18, 19 and 20 make the legislative intent unambiguous that the JJ Act being a special law would have override effect on any other statute for the time being in force. Such a view stand further fortified in view of the provisions of Sections 29 and 37 which provide for constitution of a Child Welfare Committee which provides for welfare of the children including rehabilitation.

362) Clause (n) of Section 2 of JJ Act defines ‘offence’ which means offence punishable under any law for the time being in force. So, it means that the said provision does not make any distinction between the offence punishable under IPC or punishable under any local or special law.

THE TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1987:

363) The Terrorist and "Disruptive Activities (Prevention) Act, 1985, was enacted in May, 1985, in the background of escalation of terrorist activities in many parts of the country at that time. It was a temporary statute having a life of two years. However, on the basis of experience, it was felt that in order to combat and cope with terrorist and disruptive activities effectively, it was not only necessary to continue the said law but also to strengthen it further.

364) The TADA 1987 provides for a deterrent measures to deal with the menace of such serious offences like "terrorism" and "disruptive activities" and for matters connected therewith. Therefore, the object of the Act is to deal with the security of the State as well as the citizens.

365) Section 25 of TADA has a non-obstante clause providing for an overriding effect to the provisions over anything inconsistent therewith contained in any other enactment or any instrument having effect by virtue of any other enactment. Thus, TADA contains many other non-obstante clauses as well. The punishments provided by Sections 5 and 6 of TADA are to be imposed notwithstanding anything to the contrary in any other law. Section 7 enables the State to confer the power of arrest to certain persons. The Designated Court alone has the jurisdiction to try offences under TADA as revealed under Section 9. Further, Section 20 of TADA provides that irrespective of any provision of the Code or any other law, every offence punishable under the TADA would be deemed to be a cognizable offence.

366) Section 15 provides different special rules of evidence. Section 21 provides for presumption of guilt in specified circumstances and it carves out an exception to the general rule of criminal jurisprudence, though presumption is rebuttable. (Vide: Kartar Singh (supra) and Sanjay Dutt (II) (supra).

367) Sections 5 and 6 which are mandatory in nature provide for imposition of minimum sentence to achieve the objectives of the Act. Undoubtedly, TADA applies to deal with an extraordinary situation and problems and extreme measures to be resorted when it is not possible for the State to tackle the situation under the ordinary penal law. TADA provides for a special machinery to combat the growing menace of terrorism in the country specifically where accused cannot be checked and controlled under the ordinary law of the land. Disruptive activities have been defined in clause 2(b) as the Act deals to prevent the menace of terrorism. Terrorism means use of violence when its most important result is not merely the physical and mental damage to the victim but the prolonged physiological effect it produces or has the potentiality of producing on the society as a whole. Terrorism is generally an attempt to acquire or maintain power or controlled by intimidation and causing fear and helplessness in the minds of people at large or any section thereof and it is a totally abnormal phenomenon. Terrorism is distinguishable from other forms of violence as

in the former, the deliberate and systematic use of coercive intimidation is used. (Vide: Hitendra Vishnu Thakur & Ors. vs. State of Maharashtra & Ors., (1994) 4 SCC 602)

368) Disruptive activities have been defined under Section 4(2) which means activities to disturb or intended to disturb directly or indirectly the sovereignty and territorial integrity of India or to bring the cessation of any part of India from the Union.

369) Section 3 provides for punishment for terrorist acts and provides whoever with intention commits such acts shall be punishable. Section 3 provides for punishment for terrorist acts and its submissions started with 'whoever' except clause 5 which starts with 'any person'. Therefore, it covers every person including the juvenile. Section 4(1) provides for punishment for disruptive activities and also uses the same terminology i.e whoever. Section 6 provides for enhanced punishments and refers to any person. Therefore, the phraseology used by legislature included every person whoever he may be.

370) There is no justification whatsoever to restrict the meaning of 'any person' and 'whoever' only to a major or non-juvenile as such an interpretation would have a potentiality to defeat the object of TADA.

371) Section 12(1) of the J & J Act 2000 which is analogous to Section 18(1) of the Act 1986 reads as under:

> "12. Bail of juvenile.-(l) When any person accused of a bailable or nonbailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety [or placed under the supervision of a Probation Officer or under the care of any fit institution or fit person] but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice." (Emphasis added)

372) Therefore, question does arise in case the JJ Act itself provides for an exception under which even bail may not be granted, we cannot accept the contention that JJ Act would over-ride the provisions of TADA in all circumstances without any exception and in case the legislature itself has carved out an exception not to grant relief to a juvenile under the JJ Act, it cannot be held that it would prevail over TADA under all possible circumstances.

373) Ends of justice has not been defined in any statute, however, this expression "ends of justice" has been used in the Constitution of India under Article 139-A(2) that the Supreme Court may, if it deems it expedient so to do for the ends of justice, transfer any case, appeal or other proceedings pending before any High Court to any other High Court. Article 142 of the Constitution empowers this Court to pass an order which may be necessary for doing complete justice in any case or matter pending. Section 151 of the Code of Civil Procedure 1908 confers unlimited inherent powers on the court to make such orders as may be necessary for the ends of justice. Section 482 of the Code confers inherent power upon the High Court to pass an order as may be necessary to secure the ends of justice. The words in Section 151 of CPC to "secure the" seems to be more powerful then the term to meet the ends of justice as the former is of unfathomable limits.

374) It has always been the subject matter of debate as what does the words "the ends of justice" mean, for the reason "that it is one of those questions to which the resigned wisdom applies that man cannot find a definitive answer, but can only try to improve the question". (Vide: L. Vijay Kumar vs. Public Prosecutor, A.P., AIR 1978 SC 1485).

375) In Delhi Development Authority vs. Skipper Construction Co. (P) Ltd. and Another, AIR 1996 SC 2005, this Court observed that it is advisable to leave the power undefined and uncatalogued, so that it remains elastic enough to be moulded to suit the given situation.

376) While dealing with such an issue, the court must not lose sight of

the fact that meaning of "ends of justice" essentially refers to justice to all the parties. This phrase refers to the best interest of the public within the four corners of the statute. In fact, it means preservation of proper balance between the Constitutional/Statutory rights of an individual and rights of the people at large to have the law enforced. The "ends of justice" does not mean vague and indeterminate notions of justice, but justice according to the law of the land. (Vide: State Bank of Patiala & Ors. vs. S.K. Sharma, AIR 1996 SC 1669; and Mahadev Govind Gharge & Ors. vs. The Special Land Acquisition Officer, Upper Krishna Project, Jamkhandi, Karnataka, (2011) 6 SCC 321)

377) Thus, the law has to be interpreted in such a manner that it develops coherently in accordance with the principles, so as to serve, even-handedly, the ends of justice.

378) Anti social operation of the appellants was not designed against any individual rather proved to be a security risk which imperiled a very large number of innocent persons and damage to the properties worth a very large amount.

379) Section 4(1) of JJ Act was added by amendment with effect from 22.08.2006. In fact, this provision gives the over-riding effect to this Act over other statutes. However, it reads that the Act would override "anything contained in any other law for the time being in force". The question does arise as to whether the statutory provisions of JJ Act would have an over-riding effect over the provisions of TADA which left long back and was admittedly not in force on 22.8.2006. Thus, the question does arise as what is the meaning of the law for the time being in force. This Court has interpreted this phrase to include the law in existence on the date of commencement of the Act having over-riding effect and the law which may be enacted in future during the life of the Act having over-riding effect. (Vide: Thyssen Stahlunion GMBH vs. Steel Authority of India Ltd., AIR 1999 SC 3923; and Management of M.C.D. vs. Prem Chand Gupta & Anr., AIR 2000 SC 454).

380) Thus, we do not think that the JJ Act would have an over-riding effect on TADA which was not in existence on the date of commencement of the provisions of Section 1(4) of JJ Act.

381) TADA, being a special act, meant to curb the menace of terrorist and disruptive activities will have effect notwithstanding the fact that JJ Act is general and beneficial legislation. On perusal of aims and objects of TADA, it is clear that the act is brought into the statute books to deal with a special category of persons, viz., Terrorists.

382) In Madan Singh vs. State of Bihar, (2004) 4 SCC 622, this Court upheld the convictions made by the Designated Court in respect of accused persons who had killed several police officers in combat. While affirming that the offence committed was rightly charged under Section 3 of TADA, this Court made detailed observations in respect of terrorist activities and held as follows:

> "19. Terrorism is one of the manifestations of increased lawlessness and cult of violence. Violence and crime constitute a threat to an established order and are a revolt against a civilised and orderly society. "Terrorism" though has not been separately defined under TADA there is sufficient indication in Section 3 itself to identify what it is by an all inclusive and comprehensive phraseology adopted in engrafting the said provision, which serves the double purpose as a definition and punishing provision nor is it possible to give a precise definition of "terrorism" or lay down what constitutes "terrorism". It may be possible to describe it as use of violence when its most important result is not merely the physical and mental damage of the victim but the prolonged psychological effect it produces or has the potential of producing on the society as a whole. There may be death, injury, or destruction of property or even deprivation of individual liberty in the process but the extent and reach of the intended terrorist activity travels beyond the effect of an ordinary crime capable of being punished under the ordinary penal law of the land and its main objective is to overawe the Government or disturb the harmony of the society or "terrorise" people and the society and not only those directly assaulted, with a view to disturb the even tempo, peace and tranquility of the society and create a sense of fear and insecurity."

TADA, thus, being an act enacted for special purposes, as stated above, will have precedence over any other act.

383) Applying the above to the facts of the present case, it is clear that the appellant from his conduct referred to above cannot by any stretch of imagination qualify as a child in need of care and protection as the acts committed by him are so grave and heinous warranting the maximum penalty but the Designated Court after considering all these factors awarded him lesser punishment when the co-accused who accompanied him to Fishermen's colony and committed similar acts were awarded with the maximum punishment for heinous acts committed by them along with co-accused.

Conclusion:

384) Thus, from the reading of the entire evidence placed by the prosecution, it is established beyond doubt that:

(i) The appellant took oath that he will take revenge against Hindus;
(ii) The appellant received training in handling of arms and explosives at Sandheri and Borghat;
(iii) He attended conspiratorial meeting at the residence of Babloo and Mobina;
(iv) He participated in filling of RDX and iron scraps in vehicles in the intervening night of 11/12.03.1993 at Al-Hussaini Building;
(v) He along with other co-accused lobbed hand-grenades at Mahim Fishermen's colony;
(vi) He possessed 17 hand-grenades which were concealed in the over-head water tank of Room No. 27, Chawl No. 22, Transit Camp, Bandra (E), Bombay which were recovered at his instance.

Upon a reading of the entire evidence, we hold that all the charges framed against him stand proved beyond any doubt.

Sentence:

385) The appellant was given full opportunity to defend himself on the question of quantum of sentence. The appellant filed statement dated 07.12.2006 on the quantum of sentence which is Exhibit 3051. The appellant prayed that the following factors, amongst others, may be considered while determining his sentence:

(i) His brothers were residing separately after marriage and his mother and two younger brothers were residing with him
(ii) At the time of his arrest, he was 17 years and 3 months old.
(iii) He was the sole bread winner of the family. He was working in a beef shop.
(iv) His father was 70 years old and also suffered with diabetes and high blood pressure.
(v) His mother was 60 years old.
(vi) He had been in custody for about 13 and a half years
(vii) He was from a poor family and they could not pay the heavy amount of fine

386) It is seen from the judgment that all the above said factors have been duly considered by the Designated Court while determining on the question of sentence. It was observed:

> "1215) Thus considering gruesome results likely to be ensued by commission of acts and in fact having ensued and still A-32, 36, 39 & 43 without any rhyme or justification or even without any sort of reason plausible or otherwise, committing such acts reveal that each of them was coveted member of conspiracy, of which members had become blind for working out heinous plans hatched by them i.e. the one in which there existed no regard to the life of any person, not even remotely connected with any of them. Needless to add that existence of such persons would be eminently dangerous for the society of law-abiding persons. It is difficult to perceive that such persons can be reformed by any type of punishment. However, as stated earlier having due regard to age of A-43 and the same to some extent denoting of there being some chance of reforming him necessary concession will be required to be given to him while awarding the sentence. Thus considering the gravity of acts committed by others i.e. A-32, 36 & 39 and still granting him only the sentence of life by ignoring that the acts committed by him has not transcended more than the results ensued

due the grace of God and not because of themselves were not having such an intent; would amount to ignoring potential danger to the society from existence of such a person. Needless to add any amount of life sentence and/or fine would be too inadequate for punishing element of criminality entertained by such accused person and so also the same would be too inadequate to assure the society at large that the arms of law would be well protecting it. All the said factors clearly warrant levying of extreme penalty for such persons.

1216) At any rate, the aforesaid discussion being mainly for the offence of conspiracy and so also the commission of terrorist acts by them and during the same considering all the factors relevant to acts a conclusion has been flown that considering the repetition of commission of such acts by each of them, the same would warrant according extreme penalty as prescribed for relevant offence excepting for A-43 for whom the same will be required to be given on some what lower pedestal. However, still while awarding the sentence basic principle on which this court has so far progressed that awarding the same on the basis of criminality entertained by concerned accused while committing the act will be required to be borne in mind while prescribing punishment for every distinct offence committed by each of them. The same is necessary that as each of them had committed terrorist acts only one occasion i.e. lobbing hand grenades at Fishermen Colony. Hence the punishment would be required to be awarded for other offences committed by each of them on the same principles on which the same has been awarded to other accused. Since while sentencing the accused persons found guilty for offence under section 5 of TADA no sentence has been awarded to accused also found guilty for commission of offences under Arms Act for the same act, the same criteria will be required to be followed for A-43 who has been found guilty for commission for such offences."

387) All the materials placed show that the appellant has knowingly and willingly participated at various stages of the conspiracy. The appellant took training in handling of arms and ammunitions and explosives at Sandheri, attended conspiratorial meetings, kept hand grenades in his possession, actively participated in the preparation of vehicle bombs which were later planted at various locations resulting in the death of hundreds of people and injuries to many others and went to the Fishermen's Colony at Mahim and threw hand grenades. Despite being fully aware of the conspiracy, the appellant proceeded to act by taking training, preparation of vehicle bombs and even throwing hand grenades in a populated place, thereby, furthering the object of such a heinous conspiracy.

388) In view of the above discussion, we confirm the conviction and sentence awarded by the Designated Court, consequently, the appeals are dismissed.

Criminal Appeal No. 924 of 2008

Shaikh Ali Shaikh Umar (A-57) ... Appellant(s)

vs.

The State of Maharashtra,
through Superintendent of
Police, CBI (STF), Mumbai .... Respondent(s)

****

389) Mr. Aabad Ponda, learned counsel appeared for the appellant (A-57) and Mr. Mukul Gupta, learned senior counsel duly assisted by Mr. Satyakam, learned counsel for the respondent.

390) The present appeal is directed against the final judgment and order of conviction and sentence dated 06.10.2006 and 07.06.2007 respectively, whereby the appellant (A-57) has been convicted and sentenced to rigorous imprisonment (RI) for life by the Designated Court under TADA for the Bombay Bomb Blast Case, Greater Bombay in B.B.C. No.1/1993.

Charges:

391) A common charge of conspiracy was framed against all the co-conspirators including the appellant. The relevant portion of the said charge is reproduced hereunder:

> "During the period from December, 1992 to April, 1993 at various places in Bombay, District Raigad and District Thane in India and outside India in Dubai (U.A.E.) and Pakistan, entered into a criminal conspiracy and/or were members of the said criminal conspiracy whose object was to commit terrorist acts in India and that you all agreed to commit following illegal acts, namely, to commit terrorist acts with an intent to overawe the Government as by law established, to strike terror in the people, to alienate sections of the people and to adversely affect the harmony amongst different sections of the people, i.e. Hindus and Muslims by using bombs, dynamites, hand grenades and other explosive substances like RDX or inflammable substances or fire-arms like AK-56 rifles, carbines, pistols and other lethal weapons, in such a manner as to cause or as likely to cause death of or injuries to any person or persons, loss of or damage to and disruption of supplies of services essential to the life of the community, and to achieve the objectives of the conspiracy, you all agreed to smuggle fire-arms, ammunitions, detonators, hand grenades and high explosives like RDX into India and to distribute the same amongst yourselves and your men of confidence for the purpose of committing terrorist acts and for the said purpose to conceal and store all these arms, ammunitions and explosives at such safe places and amongst yourselves and with your men of confidence till its use for committing terrorist acts and achieving the objects of criminal conspiracy and to dispose off the same as need arises. To organize training camps in Pakistan and in India to import and undergo weapons training in handling of arms, ammunitions and explosives to commit terrorist acts. To harbour and conceal terrorists/co-conspirators, and also to aid, abet and knowingly facilitate the terrorist acts and/or any act preparatory to the commission of terrorist acts and to render any assistance financial or otherwise for accomplishing the object of the conspiracy to commit terrorist acts, to do and commit any other illegal acts as were necessary for achieving the aforesaid objectives of the criminal conspiracy and that on 12.03.1993 were successful in causing bomb explosions at Stock Exchange Building, Air India Building, Hotel Sea Rock at Bandra, Hotel Centaur at Juhu, Hotel Centaur at Santacruz, Zaveri Bazaar, Katha Bazaar, Century Bazaar at Worli, Petrol Pump adjoining Shiv Sena Bhavan, Plaza Theatre and in lobbing handgrenades at Macchimar Hindu Colony, Mahim and at Bay-52, Sahar International Airport which left more than 257 persons dead, 713 injured and property worth about Rs.27 crores destroyed, and attempted to cause bomb explosions at Naigaum Cross Road and Dhanji Street, all in the city of Bombay and its suburbs i.e. within Greater Bombay. And thereby committed offences punishable under Section 3(3) of TADA (P) Act, 1987 and Section 120-B of IPC read with Sections 3(2)(i)(ii), 3(3)(4), 5 and 6 of TADA (P) Act, 1987 and read with Sections 302, 307, 326, 324, 427, 435, 436, 201 and 212 of Indian Penal Code and offences under Sections 3 and 7 read with Sections 25 (1A), (1B)(a) of the Arms Act, 1959, Sections 9B (1)(a)(b)(c) of the Explosives Act, 1884, Sections 3, 4(a)(b), 5 and 6 of the Explosive Substances Act, 1908 and Section 4 of the Prevention of Damage to Public Property Act, 1984 and within my cognizance."

In addition to the above-said principal charge of conspiracy, the appellant was also charged on the following counts:

At head Secondly; The accused committed an offence punishable under

section 3(3) of TADA by committing the following overt acts:

(a) He participated in the landing and transportation of arms, ammunitions and explosives at Shekhadi on 03.02.1993 and 07.02.1993;

(b) He participated in weapons training at Borghat and Sandheri District Raigarh;

(c) He attended conspiratorial meetings at the house of Nasir Ahmed Anwar Sheikh @ Babloo (AA) and Ms. Mobina @ Baya Moosa Bhiwandiwala (A-96);

(d) He participated in the preparation of vehicle bombs by filling and loading explosives like RDX with time device detonators in the night intervening 11/12.03.1993;

(e) He got Gul Mohmed @ Gullu Noor Mohammed Shaikh (A-77) into the conspiracy ; and

(f) He along with other co-accused did reconnaissance of the BMC building and stock exchange building which were marked as targets for planting bombs.

At head thirdly; The appellant accompanied other conspirators in a red coloured Maruti Van No. MFC 1972 loaded with arms, ammunition, hand grenades and explosives with an intent to conduct terrorist acts at BMC building and other places and abandoned the same near the gate of Siemens factory and thereby committed an offence punishable under Section 3(3) of TADA

At head fourthly; The appellant was in illegal possession of 7 AK-56 rifles, 14 magazines, 4 hand grenades and 2 detonators, unauthorisedly in notified area of Greater Bombay and thereby committed an offence under Section 5 of TADA;

At head fifthly; The appellant, by possessing the aforesaid arms and ammunitions, contravened the provisions of the Arms Act, 1959, Explosives Act, 1884, Explosives Rules, 1983 and The Explosive Substances Act, 1908 and thereby committed an office under Section 6 of TADA.

392) The Designated Judge found the appellant guilty on all the aforesaid charges. The appellant has been convicted and sentenced for the above said charges as under:

Conviction and Sentence:
i) The appellant has been convicted for the offence of conspiracy read with the offences described at head firstly and sentenced to RI for life alongwith a fine of Rs. 25,000/-, in default, to further undergo RI for 6 months for the commission of offence under Section 3(3) of TADA and Section 120B of IPC. (charge firstly)
ii) The appellant has been convicted for commission of offence under section 3(3) of TADA for commission of acts mentioned at head secondly and sentenced to RI for 14 years alongwith a fine of Rs. 25,000/-, in default, to further undergo RI for 6 months. (charge secondly)
iii) The appellant has been convicted and sentenced to RI for 10 years

alongwith a fine of Rs. 25,000/-, in default, to further undergo RI for a period of 6 months under Section 3(3) of TADA. (charge thirdly)
iv) The appellant has been convicted and sentenced to RI for 7 years alongwith a fine of Rs. 25,000/-, in default, to further undergo RI for a period of 6 months under Section 5 of TADA. (charge fourthly)
v) The appellant has been convicted and sentenced to RI for 9 years alongwith a fine of Rs. 50,000/-, in default, to further undergo RI for a period of 1 year under Section 6 of TADA (charge fifthly).
Evidence
393) The evidence against the appellant (A-57) is in the form of:-
(i) his own confession;
(ii) confessions made by other co-conspirators; (co-accused);
(iii) testimony of prosecution witnesses; and
(iv) documentary evidence.
394) Mr. Aabad Ponda, learned counsel appearing for the appellant-accused submitted that though confession under TADA is admissible, yet it is a very weak piece of evidence since the police extract confessions by using third degree methods. He also submitted that unless the person who is confessing shows that he is in express remorse or sadness or if there is a total emotional break down and he is ready to face any consequence to tell the truth, it cannot be called or regarded as a confession in law. He further pointed out that unless a confession is voluntary, it cannot be relied upon. He also contended that as per the decision of the Constitution Bench of this Court in Kartar Singh (supra), one cannot start with the confession of co-accused but it must be established based upon other evidence.
395) Inasmuch as similar contentions have been elaborately dealt with by us in earlier paragraphs, applying and reiterating the same principles, we are not once again repeating the same.
Confessional statement of Shaikh Ali Shaikh Umar (A-57)

396) The involvement of the appellant in the conspiracy is evident from his own confession recorded under Section 15 of TADA on 19.04.1993 (12:00 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. A brief summary of the said confession is as follows:
(i) At the relevant time, he was 28 years old and was a resident of Bahrampada, Bandra East and was working as a moulder in Central Railway Workshop.
(ii) He was a childhood friend of Javed Chikna and they lived in the same colony. He also got acquainted with Bashir Ahmed Usman Gani Khairulla (A-13), Mohammed Usman Jan Khan (PW-2), Sardar Shawali Khan (A-54), Anwar, Asgar Yusuf Mukadam (A-10) and Mohammed Rafiq @ Rafiq Madi Musa Biyariwala (A-46), who were the friends of Javed Chikna.
(iii) He along with A-13, PW-2, A-54, Anwar, A-10 and A-46 was introduced to Tiger Memon by Javed Chikna.
(iv) He also got acquainted with other co-accused at Tiger’s office.
(v) He, along with Javed Chikna and other co-accused, travelled to Ajmer in July-August along with 3 Pakistani nationals, out of whom, 2 got down 200 kms before Ajmer.
(vi) After reaching Ajmer, he told Javed Chikna about the Pakistani nationals.
(vii) At that time, A-57 and others guessed that Tiger and Javed Chikna were doing some illegal work along with Pakistani Nationals.
(viii) He even after that continued to meet with Javed Chikna and his friends.
(ix) During the riots, he was with the rioters.
(x) He introduced Gul Mohammed @ Gullu Noor Mohammed Shaikh (A-77) to Javed Chikna who, in turn, introduced A-77 to Tiger Memon.
(xi) On 08/09.02.1993, he along with other conspirators and Tiger Memon drove towards Goa Highway.
(xii) He was standing with a rifle while Tiger and other accused persons came with goods in a tempo. The appellant also sat on the goods in the tempo.
(xiii) They all slept at the Tower that night.
(xiv) In the appellant’s presence, Tiger Memon opened a hanging bag from the tempo which contained small bullets for pistol.
(xv) He dropped Javed at the Airport on 12.03.1993, and thereafter, he left for Dubai.
(xvi) On 09.03.1993, he along with Javed, PW-2 and other conspirators participated in the survey of BMC building as a prospective target.

(xvii) Javed told the appellant about a meeting in Bandra on 09.03.1993. He attended the said meeting.
(xviii) Tiger spoke about taking revenge and gave a provoking lecture and also gave Rs. 5,000/- to everyone present there.
(xix) The appellant again reached the residence of Tiger Memon.
(xx) Javed told the appellant that his group has to fire Machine Guns at people sitting in the BMC office and the Shiv Sena office and the role of the appellant was to stand at the door with a hand grenade and to keep a vigil. The appellant denied the same but agreed to sit with the driver.
(xxi) The appellant came down in the garage and noticed other conspirators loading RDX in vehicles on the night of 11.03.1993.
(xxii) Tiger left later that night.
(xxiii) The appellant also assisted in filling RDX in the vehicles by loading iron pieces.
(xxiv) He also described the scene at Al-Hussaini building on 12.03.1993 and also that rifles were packed in the goni.
(xxv) The appellant also kept packets of black soap in the dickey of red coloured Maruti car.
(xxvi) The appellant and Mohammed Moin Faridulla Qureshi (A-43) kept the rifles and cassettes in Maruti car no. MFC 1972 on 12.03.1993.
(xxvii) Thereafter, the appellant along with other conspirators left in the red Maruti Van for BMC office and the plan got cancelled because they did not have bullets.
(xxviii) A blast occurred near the passport office and because of the same the glass of Maruti car in which the appellant and other conspirators were sitting was blown off. They parked the car in a lane and hired a taxi.
(xxix) The appellant then met Javed who told him that explosions have happened and gave him Rs. 5,000/- and asked him to go to Ahmadnagar.
397) A perusal of the confession of the appellant shows that he guarded the area at the time when landing of arms, ammunition and explosives took place at Shekhadi. He filled iron scraps and RDX in vehicles in the intervening night of 11/12.03.1993. He attended conspiratorial meetings and also conducted reconnaissance of the B.M.C. building and on the fateful day he travelled in a Maruti Van loaded with arms, ammunitions, hand grenades and explosives with intent to conduct terrorist acts at BMC building and other places and abandoned the same near the gate of Siemens factory.
Confessional Statements of co-accused:
398) As regards the confessional statements of co-accused, Mr. Aabads Ponda again while relying on the judgments of this Court in Kartar Singh (supra) and Navjot Sandhu (supra) contended that the law in Nalini's case (supra) and other subsequent judgments relying on Nalini's judgment do not lay down the correct law as they have not appreciated Kartar Singh's case in its proper perspective, consequently, the confession of co-accused cannot be pressed into service. The same objection and the dictum laid down in Kartar Singh's case and Navjot Sandhu's case as well as Nalini's case and subsequent judgments have been considered by this Court in the earlier part of our judgment, hence, there is no need to analyse the same once again.
399) Apart from his own confession, the involvement of the appellant has also been disclosed in the confessional statements of the following co-accused. The legality and acceptability of the confessions of the co-accused has already been considered by us in the earlier part of our discussion. The said confessions insofar as they refer to the appellant (A-57) are summarized hereinbelow:

Confessional Statement of Mohd. Farooq Mohd. Yusuf Pawale (A-16)

Confessional statement of A-16 under section 15 of TADA has been recorded on 20.05.1993 (16:30 hrs.) and 22.05.1993 (16:45 hrs.) by Shri Sanjay Pandey (PW-492), the then DCP, Zone-VIII, Bombay. A perusal of his confessional statement corroborates the statement of the appellant to the effect that he travelled to Shekhadi along with co-accused and that he was given a rifle by Tiger Memon to keep a guard at the coast while landing was taking place, whereafter, he along with others went to the Tower with the landed goods in the Tempo and slept at the Tower.
Confessional Statement of Nasir Abdul Kadar Kewal @ Nasir Dhakla (A-64)

Confessional statement of A-64 under section 15 of TADA has been recorded on 22.01.1995 and 24.01.1995 by Shri HC Singh (PW-474), the then

Superintendent of Police, CBI/SPE/STF, New Delhi. A-64, in his confessional statement, stated as under

i) He stated that he had seen the appellant at the reception of Yakub Abdul Razak Memon (A-1) and Ayub Memon, brothers of Tiger Memon.
ii) The appellant was present at Hotel Big Splash, Alibaug in the first week of February along with Javed Chikna and other conspirators.
iii) All the conspirators went to Shekhadi beach on the next day.
iv) Tiger Memon and Javed Chikna brought around 25-30 bags.
v) The appellant boarded the tempo containing arms which had been unloaded at the landing and went to Waghani Tower.
vi) The appellant was present at the Udupi Hotel enroute to Shekhadi along with other conspirators.

Confessional Statement of Parvez Mohammed Parvez Zulfikar Qureshi (A-100)

Confessional statement of A-100 under section 15 of TADA has been recorded on 15.04.1993 (23:30 hrs.) and 17.04.1993 (17:00 hrs.) by Shri Sanjay Pandey (PW-492), the then DCP, Zone-VIII, Bombay. The confession of A-100 with reference to the appellant reveals as under:

(i) On 07/08/09.02.1993, A-100 met Javed Chikna near Bharat Motor Training School and also met the appellant (A-57) there along with other conspirators. A-100 knew the appellant as being a close friend of Javed Chikna.
(ii) The appellant was standing at Bharat Motor Training School. A-100 knew the appellant as he was the friend of Javed Chikna and he had seen the appellant several times with him.
(iii) After sometime, the appellant sat in a jeep on the instructions of Javed Chikna.
(iv) The appellant and other conspirators went to Raigad District in a jeep driven by Yakub Yeda.
(v) The appellant stood at the sea shore with a rifle when the landing was to take place.
(vi) The appellant was in the same car as of A-100 on his way back to Bombay after landing.
(vii) The appellant was present in the flat of Tiger on 11.03.1993.
(viii) The appellant was standing near the car on 12.03.1993 in which A-100 along with the appellant and other conspirators were supposed to go.

Confessional Statement of Gul Mohd. @ Gullu Noor Mohd. Shaikh (A-77)

Confessional statement of A-77 has been recorded on 17.04.1993 (14:10 hrs.) and 19.04.1993 (18:00 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. A brief summary of the confession of A-77 with reference to the appellant is as under:

(i) A-77 stated that the appellant is his friend for the last two years and was also his neighbour. The appellant introduced him to Bashir.

(ii) On 04/05.02.1993, the appellant and A-13 asked A-77 if he had a passport and told that we had to go to Dubai and Pakistan.

(iii) A-77 replied in affirmative and then the appellant and Bashir took him to Mahim where he met Javed Chikna.

(iv) Thereafter, they went to a place near the Mahim Police Station where they met a bearded man who on seeing the passport asked if A-77 was willing to do the 'daring work'.

Confessional Statement of Niyaz Mohd. @ Aslam Iqbal Ahmed Shaikh (A-98)

Confessional statement of A-98 under section 15 of TADA has been recorded on 17.05.1993 (14:30 hrs.) and 20.05.1993 (11:30 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The confession of A-98 corroborates with the fact that the appellant

participated in the survey of BMC office as a prospective target and had accompanied Javed Chikna, Babloo, Bashir and him (A-98) when Javed explained the entire plan about how to enter from the front gate and reaching the Shiv Sena and BJP offices and to fire and then the way to exit from the back door.

Confessional Statement of Bashir Ahmed Usman Gani Khairulla (A-13)

Confessional statement of A-13 under section 15 of TADA has been recorded on 16.05.1993 (10:30 hrs.) and 18.05.1993 (17:15 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The confession of A-13 corroborates the fact that the appellant was present at the house of Tiger in the night intervening 11/12.03.1993 along with other conspirators and also on 12.03.1993.

Confessional Statement of Zakir Hussain Noor Mohd. Shaikh (A-32)

Confessional statement of A-32 under Section 15 of TADA has been recorded on 16.05.1993 (11:25 hrs.) and 19.05.1993 (17:30 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The confession of A-32 corroborates the fact that the appellant was present at the house of Tiger in the night intervening 11/12.03.1993 along with other conspirators and also on 12.03.1993 and left with the conspirators at about 2:30 pm.

Confessional Statement of Abdul Khan @ Yakub Khan Akhtar Khan (A-36)

Confessional statement of A-36 under Section 15 of TADA has been recorded on 19.05.1993 (17:40 hrs.) and 21.05.1993 (18:20 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The confession of A-36 corroborates the fact that the appellant was present at Al-Hussaini on 12.03.1993 along with PW-2, A-13 and others.

Confessional Statement of Mohd. Iqbal Mohd. Yusuf Shaikh (A-23)

Confessional statement of A-23 under Section 15 of TADA has been recorded on 20.05.1993 (10:00 hrs.) and 22.05.1993 (10:00 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. A brief summary of the confession of A-23 with reference to the appellant is as under:-

(i) The appellant attended the meeting at a flat in Bandra alongwith other conspirators including Tiger Memon where plans were discussed.
(ii) The appellant was present in the house of Tiger on 11.03.1993.

400) A perusal of the confessional statements of all the above accused, viz., A-16, A-64, A-100, A-77, A-98, A-13, A-32, A-36, and A-23 clearly establish the fact that it corroborate with the confessional statement of the appellant (A-57). All these materials clearly establish that the appellant committed the following overt acts:-

(i) He participated in the landing and transportation of arms and ammunitions and explosives at Shekhadi on 03.02.1993 and 07.02.1993 and also in the transportation of the same to the Tower;
(ii) He attended conspiratorial meeting;
(iii) He participated in the preparation of vehicle bombs by filling and loading explosives like RDX with time device detonators in the night intervening 11/12.03.1993;
(iv) The appellant was actively involved in the conspiracy as he was introducing new members in the conspiracy.
(v) He got A-77 into the conspiracy;
(vi) He along with other co-accused did reconnaissance of the BMC building and the Stock Exchange Building which were marked as prospective targets for planting bombs.
(vii) The appellant, on the fateful day, travelled in a Maruti Van loaded with arms, ammunitions, hand grenades and explosives with intent to conduct terrorist acts at BMC building and other places and abandoned the same near the gate of Siemens factory.
(viii) The appellant was an important member of the team of

conspirators as he was also aware that people were sent to Dubai and Pakistan by Tiger Memon for daring works

Deposition of Prosecution Witnesses:

401) Apart from the aforesaid evidence, the involvement and the role of the appellant in the conspiracy as stated above is disclosed by the deposition of various prosecution witnesses which are as under:

Deposition of Mohd. Usman Jan Khan (PW-2)

The relevant material in his evidence is as follows:-

(i) He stated that he knew the appellant.

(ii) He identified the appellant before the Court.

(iii) The appellant came to Hotel Persian Darbar on 10.02.1993 along with other conspirators after the landing of arms and explosives at Shekhadi.

(iv) Tiger instructed the appellant to go back to Bombay.

(v) On 11.03.1993, at Al-Hussaini Building, Tiger instructed the appellant, Javed Chikna and others to go to BMC building which had been identified as a target.

(vi) On 12.03.1993, the appellant was present in the flat of Tiger.

(vii) On 12.03.1993, the appellant was in the same group as of PW-2 and Javed Chikna.

(viii) The appellant, PW-2, Javed Chikna, Bashir Khan and Babloo left in a Maruti Van loaded with AK-56 rifles, detonators, hand grenades and magazines for BMC building on 12.03.1993.

(ix) On 12.03.1993, Javed Chikna gave Rs. 5,000/- to the appellant and asked him to leave Bombay for Ahamednagar.

(x) The appellant was present at Al-Hussaini on 12.03.1993 and was given money by Javed Chikna

(xi) The appellant threw the detonator out of the Maruti Van on the road on 12.03.1993 and when their Van got damaged due to the blast, they got scared and parked the Van and left in a taxi.

402) It was contended on behalf of the learned counsel for the appellant that the approver has not specifically named the appellant and he has not been identified by him. A perusal of the aforesaid deposition clearly establishes that the appellant has been specifically named and identified by PW-2-the Approver.

403) Further, it has also been contended that the approver has not named the appellant amongst the people who were filling the explosives in the vehicles in the garage of Al-Hussaini building in the night intervening 11/12.03.1993. The confession of the appellant himself establishes his involvement in the incident of filling and mere omission on the part of the Approver in not naming the appellant would not be a reason to disbelieve the confessional statement of the appellant.

Deposition of Krishan Lal Bishnoi (PW-193)

PW-193, the then Deputy Commissioner of Police deposed as a witness before the Court as follows:

(i) He recollected that he had recorded the confession of the appellant (A-57).

(ii) He asked the questions in Hindi language since the appellant (A-57) spoke in Hindi. He (PW-193) and A-57 were the only persons in the room where confession was recorded.

(iii) The appellant was ready to make a voluntary confession.

(iv) The appellant was told that his confession can be used as evidence against him.

(v) He recognized the confession in the court and other related documents.

(vi) In the cross-examination, he stated that all precautions were taken for recording the confession and the same was sent to the CMM.

(vii) He agreed that he did not obtain the initials of A-57 at certain places in the confession.

This deposition establishes that the confession of the appellant was recorded with full compliance of the provisions of TADA. It also establishes that the confession was voluntary.

Deposition of Madhav Shivaji Rao Surve (PW-572)

PW-572 was the person who arranged for the TIP of the appellant. He deposed before the Court for the same as under:

(i) He arranged the TIP in respect of A-57 and other co-accused who were in judicial custody.

(ii) He wrote a letter to Shri Moreshwar Thakur (PW-469), Special

Executive Magistrate, for conducting the TIP on 23.09.1993 at Arthur Road prison.

(iii) He organized the TIP at Arthur Road prison on 29.03.1993 and after that handed over the memorandum panchnama to Shri Chavan, Deputy Superintendent of Police.

Deposition of Moreshwar Gopal Thakur (PW-469)

PW 469, Special Executive Magistrate, conducted the TIP on 23.09.1993 at Central Jail, Arthur Road for the identification of the appellant. The witnesses, viz., Rajaram Ramchandra Kadam (PW-106) and Tukaram Babu Nagaonkar (PW-176) identified the appellant as the person who took training in handling of arms and ammunitions at Chinchhemal. Further, Pandurang Bandu Jadhav and Balya Ratna Jadhav also identified the appellant as the person who along with other co-accused alighted from a Jeep, took the belongings and went towards Chinchechamal. His deposition reveals as under:

(i) He conducted a TIP on 23.09.1993 at the Arthur Road Jail after receiving a letter from PW-572.

(ii) He, however, did not remember the names of panch witnesses, suspects or identifying witnesses.

(iii) He identified the memorandum parade panchnama prepared on 23.09.1993, before the Court.

Deposition of Divakar Ramakwal Mishra (PW 415)

PW-415 was the Security Guard on duty at the Siemens Factory on 12.03.1993. He deposed as follows:-

(i) He spotted a Maruti van parked outside the Siemens factory. He informed the Police which came after one hour at the spot.

(ii) He was unable to identify the accused persons in TIP conducted on 04.04.1993 since he had not seen any of them. He denied having identified A-57.

Deposition of GulabraoTatojirao Kadam (PW 461)

At the relevant time, PW-461 was a SEM and conducted TIP on 04.04.1993 at Sacred Hearts School, Worli. Sabhajeet Singh and Diwakar Mishra identified the appellant to be the person who left one Maruti Van No. 14 FC-1972 near the Company on 12.03.1993. Further, the witnesses, viz., Jagat Singh Veer Bahadur Singh and Bhadur Jagat Singh identified the appellant to be the person who was loading the goods in the vehicles in the night intervening 11/12.03.1993 at Al-Hussaini building.

Deposition of Narayan D. More (PW 46)

PW 46, a panch witness, deposed regarding the recovery of the Maruti Van outside the Siemens Factory. His deposition reveals as under:

(i) He was an electronic goods mechanic;

(ii) He was the panch witness to the recovery from the Maruti Van at Siemens factory on 12.03.1993.

(iii) He noticed 2 plastic bags in the Van. One bag was opened and was found to contain 7 rifles. The second bag contained 4 bombs and 14 magazines.

(iv) He also noticed two white bags in the front row of the Van and a bag of dates, water bottles etc.

(v) Exhibit 190 is the spot panchnama prepared by the police documenting recoveries from the Maruti Van.

Deposition of Dinesh Parshuram Kadam (PW 371)

PW-371 was a Detection Officer at the Worli Police Station when the blasts took place. His deposition reveals that:

(i) After receiving information, he went to Siemens factory on 12.03.1993 and saw a Maruti Van bearing number MFC 1972.

(ii) 2 black bags were found from the Van containing 7 AK-56 rifles, 4 hand grenades, 14 magazines and Xerox copies of the registration papers of the Van bearing registration no. MFC 1972.

(iii) He, thereafter, lodged an FIR at Worli Police station.

(iv) The registration of Van revealed that the van was in the name of Rubina Memon residing at Al-Hussaini building.

His statement corroborates with the statement of the above mentioned witnesses. It is thus established that the appellant had gone to the Siemens Factory on 12.03.1993 in the maroon coloured Maruti Van bearing no. MFC 1972. The identification of the appellant as the person who was present in the Maruti Van around the time of the incident by eye witnesses further establishes his involvement in the conspiracy. The fact, as revealed in his confession, that he was on his way to the Bombay Municipal Corporation building to kill people also stands proved. The FIR (Exhibit 1315)

corroborates the deposition of PW-371.

Deposition of Nandkumar Anant Chaugule (PW 444)

At the relevant time, PW-444 was the In-charge, Senior Inspector of Police, Bomb Detection and Disposal Squad (BDDS) of CID-Intelligence, Bombay. He stated that:

(i) He was an officer of the BDDS. He received information of a suspicious Maruti Van behind Siemens Company at Worli.

(ii) By using a rope and a hook, he opened the door of the Van and found 2 black bags containing AK-56 rifles, 4 hand grenades and magazines.

404) With regard to the above statements of various witnesses on the side of the prosecution, learned counsel for the appellant submitted that there is no specific evidence about the appellant's taking part in any training at Sanderi or Borghat or participating in landing and transportation of arms and ammunitions and explosives at Borghat and Shekhadi on 3rd and 7th of February, 1993. According to him, the eye witnesses were silent regarding the appellant's participation in landing and transportation of arms and ammunitions which landed at Shekhadi on 03/04.02.1993 and, as such, there is no material on record in the form of eye witnesses' testimony. Likewise, there is no mention by any of the persons who attended the meeting at the residence of Shakeel about the appellant having participated in the said meeting, hence, the prosecution case has not been substantiated. He further pointed out that the approver's testimony is silent about the presence of the appellant in the meeting at the residence of Mobina and Babloo and with respect to filling of RDX in the vehicles.

405) The abovesaid evidence establish that the appellant (A-57) was a member of the conspiracy which resulted in the blasts and acts which took place in Bombay on 12.03.1993. He played an active role in the conspiracy. The involvement of the appellant in various aspects of the conspiracy can be summarized below:

(i) The landing of arms and ammunitions and explosives at Shekhadi;

(ii) The transportation of arms and ammunitions and explosives which had landed at Shekhadi;

(iii) He took training in handling weapons and explosives at Sandheri;

(iv) He participated in the survey/reconnaissance of the Bombay Municipal Corporation building conducted on 09.03.1993;

(v) He attended conspiratorial meetings that took place to further the common motives of the conspirators and to decide the plan of action to meet the ends of the conspiracy;

406) It is thus established that the appellant played a significant role in the conspiracy and knew about the intention of the conspirators well before the incidents took place. The appellant shared the motive and the intention along with the other conspirators and was committed to achieve the ultimate goal of the conspiracy.

Sentence:

407) According to the prosecution, the appellant was given full opportunity to defend himself on the question of quantum of sentence. His statement was recorded on 10.10.2006 in which he prayed that the following factors, amongst others, may be considered while determining his sentence:

(i) He had been in custody for 13 years since his arrest in March, 1993;

(ii) After the demolition of the Babri Masjid, riots had ensued and he shifted to his father's residence;

(iii) Thereafter, the locality of Behrampada was attacked and houses were burnt and because of the same, his wife and children had to shift to Alunednagar;

(iv) After his savings were exhausted, he came to Bombay on 9th March, 1993 for taking money from his friend Javed Chikna;

(v) He worked with Javed Chikna and could not run away as he needed money;

(vi) He had confessed before the police and told them about everything which he had seen;

(vii) The main advocate, defending him in the case, left at a crucial juncture;

(viii) He only has his wife and children, who are totally dependent on him.

408) A perusal of the judgment of the Designated Court shows that all the above factors have been duly considered by the Designated Judge. As rightly pointed out by the prosecution, the aforesaid contentions are devoid of any merit having regard to the fact that the appellant had the

knowledge that the smuggled goods had sufficient potential for commission of terrorist acts, owing to the fact that he had also acquired training in handling sophisticated arms and ammunitions. Further, it was contended that the appellant was forced by circumstances to work with Javed Chikna, is not tenable as despite being needy and requiring money at the time of first landing, he got to know that the first landing was of arms and ammunitions and explosives which were capable of causing mass destruction, he chose to remain silent instead of approaching the police or taking recourse to law. Despite all this, he participated in the second landing at Shekhadi, and moreover, he went to Sandheri and took training in handling of arms, ammunition and explosives.

409) The appellant attended crucial conspiratorial meetings also. On the night of 11/12.03.1993, he participated in the filling of RDX in vehicles for the preparation of vehicle bombs. He also introduced Gul Mohmed (A-77) in the conspiracy and got him recruited for training in handling of arms and ammunitions and explosives at Pakistan. The appellant also undertook reconnaissance of the B.M.C. building and the Stock Exchange building along with A-44, PW-2, Javed Chikna and Tiger Memon, which were marked as targets for planting bombs.

410) The appellant's guilt is further established by the fact revealed in his confession that after the blasts, he left Bombay and went to Ahmednagar. This establishes that he knew that whatever the conspirators had done was wrong and contrary to law. Thus, his claim that he disassociated himself at the time of the first landing at Shekhadi has not been made out in the light of other evidence on record. In fact, he was engaged in the commission of acts furthering the object of such a heinous conspiracy.

411) The appellant participated in the acts mentioned above willingly and with complete knowledge. He knew that the arms and ammunitions, RDX and hand grenades, which were smuggled into India at Shekhadi would be used for committing terrorist acts. It is clearly established from his confession that Tiger Memon had told his associates that the smuggled arms were to be used against Hindus to take revenge for the demolition of Babri Masjid and that they would be used for causing blasts in Bombay.

412) In the light of the above, we hold that the conviction and sentence awarded by the Designated Court to the appellant is justified and there is no ground for interference. Consequently, the appeal is accordingly dismissed.

Criminal Appeal Nos. 933-936 of 2008

Niyaz Mohammed @ Aslam Iqbal
Ahmed Shaikh (A-98) .....Appellant(s)

vs.

The State of Maharashtra,
through CBI-STF, Mumbai ....Respondent(s)

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413) Mr. Aabad Ponda, learned counsel for the appellant (A-98) and Mr. Mukul Gupta, learned senior counsel duly assisted by Mr. Satyakam, learned counsel for the respondent-CBI.

414) The abovesaid appeals are directed against the final judgment and order of conviction and sentence dated 03.10.2006 and 01.06.2007 respectively, whereby the appellant (A-98) has been convicted and sentenced to rigorous imprisonment (RI) for life by the Designated Court under TADA for the Bombay Bomb Blast Case, Greater Bombay in B.B.C. No.1/1993.

Charges:

415) A common charge of conspiracy was framed against all the co-conspirators including the appellant (A-98). The relevant portion of the said charge is reproduced hereunder:

"During the period from December, 1992 to April, 1993 at various places in Bombay, District Raigad and District Thane in India and outside India in Dubai (U.A.E.) and Pakistan, entered into a criminal conspiracy and/or were members of the said criminal conspiracy whose object was to commit terrorist acts in India and that you all agreed to commit following illegal acts, namely, to commit terrorist acts with an intent to overawe the Government as by law established, to strike terror in the people, to alienate sections of the people and to adversely affect the harmony amongst different sections of the people, i.e. Hindus and Muslims by using bombs, dynamites, hand grenades and other explosive substances like RDX or inflammable substances or fire-arms like AK-56 rifles, carbines, pistols and other lethal weapons, in such a manner as to cause or as likely to cause death of or injuries to any person or persons, loss of or damage to and disruption of supplies of services essential to the life of the community, and to achieve the objectives of the conspiracy, you all agreed to smuggle fire-arms, ammunitions, detonators, hand grenades and high explosives like RDX into India and to distribute the same amongst yourselves and your men of confidence for the purpose of committing terrorist acts and for the said purpose to conceal and store all these arms, ammunitions and explosives at such safe places and amongst yourselves and with your men of confidence till its use for committing terrorist acts and achieving the objects of criminal conspiracy and to dispose off the same as need arises. To organize training camps in Pakistan and in India to import and undergo weapons training in handling of arms, ammunitions and explosives to commit terrorist acts. To harbour and conceal terrorists/co-conspirators, and also to aid, abet and knowingly facilitate the terrorist acts and/or any act preparatory to the commission of terrorist acts and to render any assistance financial or otherwise for accomplishing the object of the conspiracy to commit terrorist acts, to do and commit any other illegal acts as were necessary for achieving the aforesaid objectives of the criminal conspiracy and that on 12.03.1993 were successful in causing bomb explosions at Stock Exchange Building, Air India Building, Hotel Sea Rock at Bandra, Hotel Centaur at Juhu, Hotel Centaur at Santacruz, Zaveri Bazaar, Katha Bazaar, Century Bazaar at Worli, Petrol Pump adjoining Shiv Sena Bhavan, Plaza Theatre and in lobbing handgrenades at Macchimar Hindu Colony, Mahim and at Bay-52, Sahar International Airport which left more than 257 persons dead, 713 injured and property worth about Rs.27 crores destroyed, and attempted to cause bomb explosions at Naigaum Cross Road and Dhanji Street, all in the city of Bombay and its suburbs i.e. within Greater Bombay. And thereby committed offences punishable under Section 3(3) of TADA (P) Act, 1987 and Section 120-B of IPC read with Sections 3(2)(i)(ii), 3(3)(4), 5 and 6 of TADA (P) Act, 1987 and read with Sections 302, 307, 326, 324, 427, 435, 436, 201 and 212 of Indian Penal Code and offences under Sections 3 and 7 read with Sections 25 (1A), (1B)(a) of the Arms Act, 1959, Sections 9B (1)(a)(b)(c) of the Explosives Act, 1884, Sections 3, 4(a)(b), 5 and 6 of the Explosive Substances Act, 1908 and Section 4 of the Prevention of Damage to Public Property Act, 1984 and within my cognizance."

In addition to the above-said principal charge of conspiracy, the appellant was also charged on the following counts:

At head Secondly:-

a) He visited Pakistan along with his co-conspirators via Dubai and took training in handling of arms and ammunitions and explosives with the object of committing terrorist acts;
b) He attended the conspiratorial meetings at the residence of Nazir Ahmed Anwar Shaikh @ Babloo and Mobina Bayamoosa Bhiwandiwala (A-96) ; and
c) He did reconnaissance of BMC Building along with his co-conspirators viz., Tiger Memon, Mohd. Usman Jan Khan, Javed Chikna, Shaikh Ali for selecting targets in order to plant bombs for the purpose of committing terrorist acts.

416) The charges mentioned above were proved against the appellant (A-98). The appellant has been convicted and sentenced for the above said charges as under:

Conviction and Sentence:

i) The appellant has been convicted for the offence of conspiracy read with the offences described at head firstly and sentenced to RI for life along with a fine of Rs. 25,000/-, in default, to further undergo RI for 6 months. (charge firstly)

ii) The appellant has also been convicted under Section 3(3) of TADA for commission of offences at head secondly and sentenced to RI for life along with a fine of Rs. 25,000/-, in default, to further undergo RI for 6 months. (charge secondly)

Evidence

417) The evidence against the appellant (A-98) is in the form of:-

(i) his own confession;

(ii) confessions made by other co-conspirators; (co-accused);

(iii) testimony of prosecution witnesses; and

(iv) documentary evidence.

Confessional statement of Niyaz Mohammed @ Aslam Iqbal Ahmed Shaikh (A-98)

418) The prosecution submitted that the involvement of the appellant in the conspiracy is evident from his own confession recorded under Section 15 of TADA on 17.05.1993 (14:30 hrs.) and 20.05.1993 (11:30 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The confession of the appellant is summarized below:-

(i) His house was damaged during riots and he shifted to Hakim building.

(ii) At the new residence, he was introduced by Sajid to a person called Jabir, who asked him about his interest to go to Dubai. On expressing his desire for the same, the appellant was asked for his passport by Jabir.

(iii) Thereafter, Jabir made all the arrangements for his travel and on 08.02.1993, he went to Dubai alongwith Firoz @ Akram Amani Malik (A-39). He was told that his visa would be given at Dubai and a person will receive them at the Airport.

(iv) He along with A-39 was received by Ayub Memon (AA) who took them to the residence of Tahir Bhai (AA) where Nasim Ashraf Shaikh Ali Barmare (A-49) was already present.

(v) From Dubai, he went to Pakistan along with A-49 and A-39.

(vi) In Pakistan, he was given the fake name, 'Aslam'.

(vii) In Pakistan, he took training in handling weapons including dismantling, re-assembling and firing of pistols, AK-56 rifles, hand-grenades, detonators, timer pencils and making of bombs by using RDX.

(viii) Parvez Mohammed Parvez Zulfikar Qureshi (A-100) and other co-accused persons were also present in the training.

(ix) Tiger Memon also imparted training for two days.

(x) On completion of the training, he alongwith some others left Pakistan and reached Dubai on 27.02.1993.

(xi) On 01.03.1993, the remaining persons, who had participated in the training along with him in Pakistan as well as Tiger Memon, returned to Dubai.

(xii) Thereafter, at the instance of Tiger Memon, he and others (including A-100) took oath of maintaining secrecy and committing Jehad for the sake of Islam. Further, Tiger spoke about the atrocities committed on Muslims during the communal riots in Bombay and taking revenge for the same.

(xiii) He along with Gul Mohammed @ Gullu Noor Mohammed Shaikh (A-77) and Nasir Abdul Kader Kewal @ Nasir Dakhla (A-64) left Dubai on 02.03.1993 and arrived Bombay on 03.03.1993.

(xiv) On 07/08.03.1993, A-98 and A-49 helped Irfan Chougule (AA) in unloading 7-8 gunny bags filled with RDX from his fiat car.

(xv) On 08/09.03.1993, he participated in the conspiratorial meeting at the residence of Mobina Bayamoosa Bhiwandiwala (A-96) where A-100 was also present along with other co-accused persons.

(xvi) He participated in reconnaissance of the BMC Building alongwith Tiger Memon, Javed Chikna, PW-2, A-54 and A-57. On reaching the said building, Tiger Memon told them that they would have to make indiscriminate firing pointing out to them the entry and exit points of the building and also pointed out the place of parking the vehicle and the manner in which they had to flee away after effecting the said firing.

419) From the above confession of the appellant, the following facts emerge:

(i) He participated in the weapons training at Pakistan;

(ii) He took oath after placing his hands on Quran that he will take

revenge;

(iii) He attended/participated in the conspiratorial meeting at Mobina's (A-96) residence where plans were chalked out for committing terrorist acts; and

(iv) He participated in reconnaissance of the BMC Building alongwith other co-accused persons where the manner of attack was demonstrated.

420) From the confession of the accused and from his various overt acts, his involvement in the conspiracy has been clearly established. The prosecution highlighted that the appellant has made the above confession voluntarily, without any pressure or coercion and the same has been recorded after following all the safeguards enumerated under section 15 of TADA and the rules framed thereunder.

Confessional Statements of co-accused:

421) Apart from his own confession, the involvement of the appellant has also been disclosed in the confessional statements of the following co-accused. The legality and acceptability of the confessions of the co-accused has already been considered by us in the earlier part of our discussion. The said confessions insofar as they refer to the appellant (A-98) are summarized hereinbelow:

Confessional Statement of Mohd. Farooq Mohd. Yusuf Pawale (A-16)

Confessional statement of A-16 under Section 15 of TADA has been recorded on 20.05.1993 (16:30 hrs.) and 22.05.1993 (16:45 hrs.) by Shri Sanjay Pandey (PW-492), the then DCP, Zone-VIII, Bombay. The confession of A-16 with reference to the appellant reveals that he participated in the weapons training at Pakistan and was given a fake name - 'Aslam'.

Confessional Statement of Shahnawaz Abdul Kadar Qureshi (A-29)

Confessional statement of A-29 under Section 15 of TADA has been recorded on 18.05.1993 (18:30 hrs.) and 21.05.1993 (14:45 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The confession of A-29 with reference to the appellant reveals that he participated in the weapons training at Pakistan.

Confessional Statement of Zakir Hussain Noor Mohd. Shaikh (A-32)

Confessional statement of A-32 under Section 15 of TADA has been recorded on 16.05.1993 (11:25 hrs.) and 19.05.1993 (17:30 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The confession of A-32 with reference to the appellant reveals that he participated in the weapons training at Pakistan.

Confessional Statement of Abdul Akhtar Khan (A-36)

Confessional statement of A-36 under Section 15 of TADA has been recorded on 19.05.1993 (17:40 hrs.) and 21.05.1993 (18:20 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The confession of A-36 with reference to the appellant reveals that he participated in the weapons training at Pakistan.

Confessional Statement of Feroz @ Akram Amani Malik (A-39)

Confessional statement of A-39 under Section 15 of TADA has been recorded on 19.04.1993 (22:30 hrs.) and 23.04.1993 (20:50 hrs.) by Mr. P.D. Pawar (PW-185), the then DCP, Zone V, Bombay. The confession of A-39 with reference to the appellant reveals as under:-

(i) He participated in the weapons training at Pakistan.

(ii) He attended conspiratorial meeting held at the residence of A-96 at Bandra.

Confessional Statement of Nasim Ashraf Shaikh Ali Barmare (A-49)

Confessional statement of A-49 under Section 15 of TADA has been recorded on 16.05.1993 (9:30 hrs.) and 18.05.1993 by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The confession of A-49 with reference to the appellant reveals as under:

(i) He participated in the weapons training at Pakistan.

(ii) All of them took oath that they will take revenge.

Confessional Statement of Salim Rahim Shaikh (A-52)

Confessional statement of A-52 under Section 15 of TADA has been recorded on 15.04.1993 and 18.04.1993 by Mr. P.D. Pawar (PW-185), the then DCP, Zone V, Bombay. The confession of A-52 with reference to the appellant reveals the following facts:

(i) He participated in the weapons training at Pakistan and a fake name

(Aslam) was given to him there.

(ii) All of them took oath that they will take revenge for the loss caused to Muslims

(iii) All the co-accused persons who underwent the above training were present in the conspiratorial meeting that took place on 06/07.03.1993, at 10.00 p.m, at Tiger's residence, at Hill Road, opposite Dava Hotel, Bandra.

(iv) He was present at Al-Hussaini building on 11.03.1993.

Confessional Statement of Shaikh Ali Shaikh Umar (A-57)

Confessional statement of A-57 under Section 15 of TADA was recorded on 19.04.1993 (12:00 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The confession of A-57 with reference to the appellant reveals that the appellant participated in the survey of BMC Building along with other co-accused.

Confessional Statement of Nasir Abdul Kadar Kewal @ Nasir Dhakla (A-64)

Confessional statement of A-64 under Section 15 of TADA has been recorded on 22.01.1995 and 24.01.1995 by Shri H.C. Singh (PW-474), the then Superintendent of Police, CBI/SPE/STF, New Delhi. The confession of A-64 with reference to the appellant reveals that he participated in the weapons training that took place at Pakistan.

Confessional Statement of Mohd. Rafiq Usman Shaikh (A-94)

Confessional statement of A-94 under Section 15 of TADA has been recorded on 14.05.1993 (18:30 hrs.) and 16.05.1993 by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The confession of A-94 with reference to the appellant reveals that the appellant participated in the weapons training at Pakistan.

Confessional Statement of Parvez Mohd. Parvez Zulfikar Qureshi (A-100)

Confessional statement of A-100 under Section 15 of TADA has been recorded on 15.04.1993 (23:30 hrs.) and 17.04.1993 (17:00 hrs.) by Shri Sanjay Pandey (PW-492), the then DCP, Zone-VIII, Bombay. A brief summary of the confession of A-100 with reference to the appellant is as under:-

(i) A-100 underwent weapons training at Pakistan. He also met the appellant who introduced himself as Aslam, the fake name given to him in Pakistan.

(ii) A-100 and others (including the appellant), took oath of maintaining secrecy and committing Jehad for the sake of Islam. Further, Tiger spoke about the atrocities committed on Muslims during the communal riots in Bombay and taking revenge for the same.

(iii) A-100 attended the conspiratorial meeting held by Tiger at Bandra on 09.03.1993, wherein Tiger gave Rs. 5,000/- to everyone present for celebrating Eid. The appellant was also present in the said meeting.

422) The aforesaid confessions establish the following facts:-

(i) The appellant underwent training for handling arms and ammunitions and explosives at Pakistan;

(ii) The appellant took oath of maintaining secrecy and committing Jehad for the sake of Islam alongwith other co-accused;

(iii) The appellant was present in the conspiratorial meeting at the residence of A-96; and

(iv) The appellant was actively involved in reconnaissance of the BMC Building in order to commit terrorist acts.

Deposition of Prosecution Witnesses:

423) Apart from the aforesaid evidence, the involvement and the role of the appellant in the conspiracy as stated above is disclosed by the deposition of various prosecution witnesses which are as under:

Deposition of Mohd. Usman Jan Khan (PW-2)

The relevant material in his evidence is as follows:-

(i) PW-2 knew A-98;

(ii) The appellant was introduced to PW-2 as Aslam in Pakistan at the time of training. Further, PW-2 identified 'Aslam' as the appellant before the court;

(iii) The appellant left the training camp at Pakistan along with A-39 and A-49;

(iv) After returning to Dubai from the training camp, at the instance of Tiger Memon, PW-2 along with the appellant and others took oath of maintaining secrecy by swearing on the Quran;

(v) The appellant participated in the conspiratorial meeting held at Babloo's residence on 08.03.1993;

(vi) The appellant participated in the survey of BMC Building along with other co-accused including PW-2.

The above deposition duly corroborates with the confessional statement of the co-accused persons as well as the confession of the appellant in material particulars. The evidence of PW-2 further establishes the charges framed against the appellant.

Training at Pakistan

Deposition of C.G. Sawant, API, (PW-244)

424) PW-244 was an Immigration Officer who proved the departure of the appellant to Dubai on 08.02.1993 from Bombay. The relevant entries on the Embarkation Card which was marked as X-401 concerning the departure have been marked as Exh. Nos. 1055, 1055-A and 1055-A (1).

Deposition of Lonare, PSI, (PW-209)

His arrival to Bombay on 03.03.1993 from Dubai has been proved by PW-209. The relevant endorsements on the Disembarkation Card which was marked as X-305 have been marked as Exh. Nos. 948, 948-A and 948-A(1).

425) Thus, with respect to the training at Pakistan, the confession of the appellant and the other co-accused that they first went to Dubai and from there to Pakistan for training is further established by the abovestated evidence.

426) It was contended by Mr. Aabad Ponda on behalf of the appellant that the prosecution has failed to prove beyond reasonable doubt that he went to Pakistan from Dubai. It was further contended that the appellant could have gone anywhere from Dubai and that the prosecution case of his going to Pakistan for training is manufactured one and false. It was also contended that, in any event, taking weapons training at Pakistan is by itself not an offence under any Statute whatsoever, and therefore, the appellant cannot be charged for the same and for which he has been wrongly convicted.

427) It has been established by the very own confession of the appellant that he had gone to Pakistan from Dubai where he underwent weapons training. The above confession has been corroborated by the confession of co-accused as stated above and, hence, there is no doubt whatsoever that the appellant went to Pakistan from Dubai and acquired training in arms and ammunitions and explosives in order to take revenge against Hindus

428) The passport of the appellant which has been marked as Exh. X-648 clearly shows that he left Bombay on 08.02.1993 and reached Dubai on 09.02.1993 and left Dubai on the same date and entered Dubai again on 27.02.1993 and left Dubai finally on 02.03.1993 and entered Bombay on 03.03.1993. The said entries further corroborate with the confessions of various accused persons that they did not have to go through any checking at the Airport in Pakistan. It is further submitted that it was not the case of the appellant before the trial Court that he was elsewhere. Therefore, the evidence on record clearly establishes the charge of going to Pakistan for training against the appellant.

429) The aforesaid evidence clearly establish that the appellant along with other co-conspirators was given the said training to equip themselves to commit terrorist acts in Bombay and, therefore, he has rightly been convicted under Section 3(3) of TADA mentioned at head secondly.

430) Thus, in view of the entire evidence enumerated above, we hold that the appellant was actively involved in the conspiracy to cause blasts in Bombay and in consequence of the said involvement, he has committed the offences for which he has been charged.

Sentence

431) Coming to the sentence, though there is no need to show any leniency in respect of the act involved and as proved by the prosecution, the following facts are relevant for awarding the appropriate sentence.

432) Learned counsel for the appellant pointed out that though the appellant was sentenced to RI for life, he had already served 19 years in jail. He also pointed out that the appellant is suffering from neuro problem and also had backache problem for the last five years. The appellant’s mother is also suffering from heart ailment, diabetes and blood pressure. He further pointed out that the appellant had been in custody since his arrest.

433) On the other hand, learned counsel appearing for the CBI pointed out that there is no need to show any leniency since after realizing explosions that took place in Bombay on 12.03.1993, the appellant had absconded and remained away from the clutches of law until he was arrested by the police.

434) It is true that the Designated Judge considered all these aspects while awarding sentence. There is no dispute about his participation in the training and the evidence disclosed that he participated in various

conspiratorial meetings in order to chalk out the plan for committing terrorist acts and in pursuance of the same, he did reconnaissance of the BMC Building alongwith other co-conspirators.

435) In view of the acceptable materials placed by the prosecution, relied on by the Special Judge and the reasoning appended therewith, we fully agree with the same, consequently, the appeals filed by the appellant herein (A-98) are dismissed.

Criminal Appeal Nos. 933-936 of 2008

Parvez Mohammed Parvez
Zulfikar Qureshi (A-100) ... Appellant(s)

vs.

The State of Maharashtra
through CBI-STF, Bombay ... Respondent(s)

436) Ms. Farhana Shah, learned counsel for the appellant (A-100) and Mr. Mukul Gupta, learned senior counsel duly assisted by Mr. Satyakam, learned counsel for the respondent-CBI.

437) These appeals are directed against the final judgment and order of conviction and sentence dated 06.10.2006 and 05.06.2007 respectively, whereby the appellant (A-100) was found guilty and was sentenced to rigorous imprisonment (RI) for life by the Designated Court under TADA for the Bombay Bomb Blast Case, Greater Bombay in B.B.C. No. 1/ 1993.

Charges:

438) A common charge of conspiracy was framed against all the co-conspirators including the appellant (A-100). The material part of the said charge is reproduced herein:

> "During the period from December, 1992 to April, 1993 at various places in Bombay, District Raigad and District Thane in India and outside India in Dubai (U.A.E.) and Pakistan, entered into a criminal conspiracy and/or were members of the said criminal conspiracy whose object was to commit terrorist acts in India and that you all agreed to commit following illegal acts, namely, to commit terrorist acts with an intent to overawe the Government as by law established, to strike terror in the people, to alienate sections of the people and to adversely affect the harmony amongst different sections of the people, i.e. Hindus and Muslims by using bombs, dynamites, hand grenades and other explosive substances like RDX or inflammable substances or fire-arms like AK-56 rifles, carbines, pistols and other lethal weapons, in such a manner as to cause or as likely to cause death of or injuries to any person or persons, loss of or damage to and disruption of supplies of services essential to the life of the community, and to achieve the objectives of the conspiracy, you all agreed to smuggle fire-arms, ammunitions, detonators, hand grenades and high explosives like RDX into India and to distribute the same amongst yourselves and your men of confidence for the purpose of committing terrorist acts and for the said purpose to conceal and store all these arms, ammunitions and explosives at such safe places and amongst yourselves and with your men of confidence till its use for committing terrorist acts and achieving the objects of criminal conspiracy and to dispose off the same as need arises. To organize training camps in Pakistan and in India to import and undergo weapons training in handling of arms, ammunitions and explosives to commit terrorist acts. To harbour and conceal terrorists/co-conspirators, and also to aid, abet and knowingly facilitate the terrorist acts and/or any act preparatory to the commission of terrorist acts and to render any assistance financial or otherwise for accomplishing the object of the conspiracy to commit terrorist acts, to do and commit any other illegal acts as were necessary for achieving the aforesaid objectives of the criminal conspiracy and that on 12.03.1993 were successful in causing bomb explosions at Stock Exchange Building, Air India Building, Hotel Sea

Rock at Bandra, Hotel Centaur at Juhu, Hotel Centaur at Santacruz, Zaveri Bazaar, Katha Bazaar, Century Bazaar at Worli, Petrol Pump adjoining Shiv Sena Bhavan, Plaza Theatre and in lobbing handgrenades at Macchimar Hindu Colony, Mahim and at Bay-52, Sahar International Airport which left more than 257 persons dead, 713 injured and property worth about Rs.27 crores destroyed, and attempted to cause bomb explosions at Naigaum Cross Road and Dhanji Street, all in the city of Bombay and its suburbs i.e. within Greater Bombay. And thereby committed offences punishable under Section 3(3) of TADA (P) Act, 1987 and Section 120-B of IPC read with Sections 3(2)(i)(ii), 3(3)(4), 5 and 6 of TADA (P) Act, 1987 and read with Sections 302, 307, 326, 324, 427, 435, 436, 201 and 212 of Indian Penal Code and offences under Sections 3 and 7 read with Sections 25 (1A), (1B)(a) of the Arms Act, 1959, Sections 9B (1)(a)(b)(c) of the Explosives Act, 1884, Sections 3, 4(a)(b), 5 and 6 of the Explosive Substances Act, 1908 and Section 4 of the Prevention of Damage to Public Property Act, 1984 and within my cognizance."

In addition to the above-said principal charge of conspiracy, the appellant was also charged on the following counts:

At head Secondly;

(a) He participated in the landing and transportation of arms, ammunition and explosives smuggled into India by Tiger Memon at Shekhadi;

(b) He took training in Pakistan in handling of arms, ammunitions and explosives for committing terrorist acts;

(c) He attended the conspiratorial meetings held by Tiger Memon at the residence of Nasir Ahmed @ Babloo and Ms. Mobina Baya; and

(d) He participated in filling RDX in vehicles with the object of causing explosions in Bombay.

439) The charges mentioned above were proved against the appellant (A-100). The appellant has been convicted and sentenced for the above said charges as under:

Conviction and Sentence:

i) The appellant has been convicted for the offence of conspiracy read with the offences described at head firstly and sentenced to RI for life along with a fine of Rs. 25,000/-, in default, to further undergo RI for 6 months. (charge firstly)

ii) The appellant has also been convicted under Section 3(3) of TADA for commission of offences at head secondly and sentenced to RI for life along with a fine of Rs. 25,000/-, in default, to further undergo RI for 6 months. (charge secondly)

Evidence

440) The evidence against the appellant (A-100) is in the form of:-

(i) his own confession;

(ii) confessions made by other co-conspirators; (co-accused);

(iii) testimony of prosecution witnesses; and

(iv) documentary evidence.

Confessional statement of Parvez Mohammed Parvez Zulfikar Qureshi (A-100)

441) Confessional statement of the appellant (A-100) under Section 15 of TADA was recorded on 15.04.1993 (23:30 hrs.) and 17.04.1993 (17:00 hrs.) by Shri Sanjay Pandey (PW-492), the then DCP, Zone-VIII, Bombay. The following facts emerge from the said confessional statement:-

(i) He was a close friend of Javed Chikna (AA). After the riots, one day, Javed Chikna asked him if he had a passport, to which, he replied in the affirmative. Thereafter, in the first week of February, Javed Chikna told him that he would take him to Dubai for a trip and that he is making arrangements for the same.

(ii) In the second week of February, he along with Javed Chikna, Tiger Memon and others went to Raigad.

(iii) At Raigad, he was given a revolver by Tiger Memon.

(iv) He assisted in the loading and unloading of smuggled arms.

(v) He also went to Waghani Tower alongwith others.

(vi) The aforesaid revolver was taken back from him by Tiger Memon after completion of the landing activity.

(vii) On 11.02.1993, he went to Dubai alongwith Javed Chikna and others.

(viii) He stayed in Dubai for two days and from there, he went to Pakistan.
(ix) In Pakistan, Javed Chikna spoke to him regarding taking revenge for the demolition of Babri Masjid.
(x) He underwent weapons training at Pakistan. He also met Niyaz Mohammed @ Aslam Iqbal Ahmed Shaikh (A-98) there.
(xi) On completion of the training, he along with some others left Pakistan and reached Dubai on 02.03.1993.
(xii) Tiger Memon also returned to Dubai from Pakistan, and thereafter, at his instance, he (A-100) and others took oath of maintaining secrecy and committing 'Jehad' for the sake of Islam. Further, Tiger Memon spoke about the atrocities committed on Muslims during the communal riots in Bombay and taking revenge for the same.
(xiii) On 03.03.1993, he returned to Bombay alongwith others.
(xiv) On 09.03.1993, he attended the conspiratorial meeting held by Tiger Memon at Bandra wherein Tiger distributed Rs. 5,000/- to everyone present there for celebrating Eid. A-98 was also present in the said meeting.
(xv) On the intervening night of 11/12.03.1993, he was present at Tiger Memon's residence at Al-Hussaini where many other co-accused were also present and he saw some of them loading some goods in a jeep.
(xvi) He went to Ajmer alongwith A-98.

442) The prosecution highlighted that the appellant (A-100) has made the above confession voluntarily, without any pressure or coercion and the same has been recorded after following all the safeguards enumerated under Section 15 of TADA and the rules framed thereunder.

Confessional statements of co-accused:

443) Apart from his own confession, the involvement of the appellant (A-100) has also been disclosed in the confessional statements of the following co-accused. The legality and acceptability of the confessions of the co-accused has already been considered by us in the earlier part of our discussion. The said confessions insofar as they refer to the appellant (A-100) are summarized hereinbelow:

Confessional Statement of Asgar Yusuf Mukadam (A-10)

Confessional statement of A-10 under Section 15 of TADA was recorded on 23.04.1994 (18:00 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. A-10 confessed that he handed over the tickets and passport of the appellant and two other co-accused, namely, Farooq and Salim and further that they were dropped at the Airport by him.

Confessional Statement of Parvez Nazir Ahmed Shaikh (A-12)

Confessional statement of A-12 under Section 15 of TADA was recorded on 18.04.1993 (14:00 hrs.) and 21.04.1993 (06:50 hrs.) by Shri Prem Krishna Jain (PW-189), the then DCP, Zone X, Bombay. The said confessional statement reveals the involvement of the appellant in the landing at Shekhadi.

Confessional Statement of Bashir Ahmed Usman Gani Khairulla (A-13)

Confessional statement of A-13 under Section 15 of TADA was recorded on 16.05.1993 (10:30 hrs.) and 18.05.1993 (17:15 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The said confessional statement reveals the participation/presence of the appellant in the conspiratorial meeting held at the residence of Mobina @ Bayamoosa Bhiwandiwala (A-96) at Bandra.

Confessional Statement of Mohd. Farooq Mohd. Yusuf Pawale (A-16)

Confessional statement of A-16 under Section 15 of TADA was recorded on 20.05.1993 (16:30 hrs.) and 22.05.1993 (16:45 hrs.) by Shri Sanjay Pandey (PW-492), the then DCP, Zone-VIII, Bombay. The said confessional statement of A-16, with reference to the appellant, reveals as under:

(i) A-16 knew the appellant as a friend of Javed Chikna (AA). The appellant used to sell 'charas' (narcotic substance).
(ii) He participated in the landing at Shekhadi.
(iii) He was given a pistol by Tiger Memon at Shekhadi.
(iv) He participated in the weapons training at Pakistan.

Confessional Statement of Shahnawaz Abdul Kadar Qureshi (A-29)

Confessional statement of A-29 under Section 15 of TADA was recorded on 18.05.1993 (18:30 hrs.) and 21.05.1993 (14:45 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The said confessional statement of A-29 with reference to the appellant reveals as under:

(i) He participated in the landing at Shekhadi.
(ii) He participated in the weapons training at Pakistan.
(iii) He was present at Al-Hussaini building on the night intervening 11.03.1993.

Confessional Statement of Zakir Hussain Noor Mohd. Shaikh (A-32)

Confessional statement of A-32 under Section 15 of TADA was recorded on 16.05.1993 (11:25 hrs.) and 19.05.1993 (17:30 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The said confessional statement of A-32 with reference to the appellant reveals as under:

(i) He participated in the weapons training at Pakistan.
(ii) He took oath on holy Quran that whatever he has learnt, did or happened, he will not disclose it to anyone on reaching Bombay.

Confessional Statement of Abdul Akhtar Khan (A-36)

Confessional statement of A-36 under Section 15 of TADA was recorded on 19.05.1993 (17:40 hrs.) and 21.05.1993 (18:20 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. A-36, with reference to the appellant, stated that he participated in the weapons training at Pakistan.

Confessional Statement of Feroz @ Akram Amani Malik (A-39)

Confessional statement of A-39 under Section 15 of TADA was recorded on 19.04.1993 (22:30 hrs.) and 23.04.1993 (20:50 hrs.) by Mr. P.D. Pawar (PW-185), the then DCP, Zone V, Bombay. The confession of A-39 with reference to the appellant (A-100) reveals as under:

(i) He participated in the weapons training at Pakistan.
(ii) He attended conspiratorial meeting held at the residence of A-96 at Bandra.

Confessional Statement of Nasim Ashraf Sherali Barmare (A-49)

Confessional statement of A-49 under Section 15 of TADA was recorded on 16.05.1993 (9:30 hrs.) and 18.05.1993 by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The said confession of A-49 with reference to the appellant (A-100) reveals as under:

(i) He participated in the weapons training at Pakistan.
(ii) All of them took oath that they will take revenge.

Confessional Statement of Salim Rahim Shaikh (A-52)

Confessional statement of A-52 under Section 15 of TADA was recorded on 15.04.1993 and 18.04.1993 by Mr. P.D. Pawar (PW-185), the then DCP, Zone V, Bombay. The said confession of A-52 with reference to the appellant reveals as under:

(i) He participated in the weapons training at Pakistan.
(ii) All of them took oath that they will take revenge for the loss caused to the Muslims.
(iii) He returned from Dubai on 03.03.1993.
(iv) All the co-accused persons who underwent the abovesaid training were present in the conspiratorial meeting that took place on 06/07.03.1993 at 10.00 p.m, at Tiger’s residence at Hill Road, opposite Dava Hotel, Bandra.
(v) He was present at Al-Hussaini building on 11.03.1993.

Confessional Statement of Shaikh Ali Shaikh Umar (A-57)

Confessional statement of A-57 under Section 15 of TADA was recorded on 19.04.1993 (12:00 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The said confession of A-57 with reference to the appellant reveals as under:

(i) The appellant was present at Soda factory.
(ii) The appellant participated in the landing at Shekhadi.
(iii) The appellant participated in the conspiratorial meeting at Bandra.

Confessional Statement of Nasir Abdul Kadar Kewal @ Nasir Dhakla (A-64)

Confessional statement of A-64 under section 15 of TADA was recorded on 22.01.1995 and 24.01.1995 by Shri HC Singh (PW-474), the then Superintendent of Police, CBI/SPE/STF, New Delhi. The said confession of A-

64 with reference to the appellant (A-100) reveals as under:
(i) He participated in the landing at Shekhadi.
(ii) He participated in the weapons training that took place at Pakistan.
(iii) He attended the conspiratorial meeting at Mobina's residence.

Confessional Statement of Niyaz Mohd. @ Aslam Iqbal Ahmed Shaikh (A-98)

Confessional statement of A-98 under Section 15 of TADA was recorded on 17.05.1993 (14:30 hrs.) and 20.05.1993 (11:30 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The said confession of A-98 with reference to the appellant reveals as under:-

(i) The appellant participated in the training in handling of arms and ammunitions and explosive at Pakistan.
(ii) He took oath for taking revenge.
(iii) He attended the conspiratorial meeting at the residence of Mobina Baya (A-96).

444) A perusal of the confessional statements of all the above accused, viz., A-10, A-12, A-13, A-16, A-29, A-32, A-36, A-39, A-49, A-52, A-57, A-64 and A-98 clearly establish the fact that it corroborate with the confessional statement of the appellant (A-100). After consideration of all the abovesaid confessional statements of the co-accused, the involvement of the appellant in the conspiracy is established inasmuch as:-

(i) The appellant participated in the landing at Shekhadi where arms and explosives were smuggled into India for the purpose of committing terrorist acts;
(ii) The appellant went to Pakistan via Dubai and participated in the weapons training;
(iii) The appellant participated in various conspiratorial meetings held in Dubai as well as in India including the meeting at the residence of A-96 where groups were made and final shape to the plan for blasts at various places in Bombay was discussed;
(iv) The appellant was a friend of Javed Chikna (AA);
(v) The involvement of the appellant in the conspiracy was very deep;
(vi) He participated in all the stages of conspiracy, namely, landing, training, planning etc.; and
(vii) He was present at Al-Hussaini building on the night intervening 11/12.03.1993 when activity of filling of RDX in vehicles was going on.

Deposition of Prosecution Witnesses:

445) Apart from the aforesaid evidence, the involvement and the role of the appellant in the conspiracy as stated above is disclosed by the deposition of various prosecution witnesses which are as follows:

Deposition of Mohd. Usman Jan Khan (PW-2)

We have carefully gone through his evidence implicating the appellant (A-100). The relevant material in his evidence is as follows:-

(i) PW-2 knew the appellant;
(ii) PW-2 identified the appellant in Court;
(iii) The appellant participated in the landing at Shekhadi;
(iv) The appellant participated in weapons training at Pakistan;
(v) After returning from the training camp to Dubai, at the instance of Tiger Memon, PW-2 along with the appellant and others took oath of maintaining secrecy by swearing on the Quran;
(vi) The appellant was present in the conspiratorial meeting held at Shakil's residence wherein Tiger Memon formed groups for surveying targets. PW-2, A-64 and the appellant were in one group and were assigned the task of surveying Sena Bhavan and Sahar Airport;
(vii) PW-2 went along with the appellant to survey Shiv Sena Bhavan and Sahar Airport on 08.03.1993, at which time, the appellant told him that he would not throw hand grenades on the Aircrafts at Sahar Airport since it was a dangerous assignment. However, he expressed his willingness to do the work at Sena Bhavan;
(viii) The appellant participated in the conspiratorial meeting held at Babloo's residence on 08.03.1993.

The above deposition of PW-2, the Approver, corroborates with the confessional statements of the co-accused persons as well as the confession of the appellant. The confession of the appellant read with the confessions of various co-accused persons along with the evidence of PW-2 substantiate the charges framed against him.

Deposition of API A.S. Narote (PW-243)

At the relevant time, PW-243 was on Immigration duty and proved the departure of the appellant to Dubai from Bombay on 11.02.1993. The relevant entries on the Embarkation Card (X-400) concerning the departure have been marked as Exh. Nos. 1053, 1053-A, 1053-A(1) and 1053-A(2).

Deposition of PSI PE Ramgude (PW-207)

PW-207 proved the arrival of the appellant to Bombay on 03.03.1993 from Dubai. The relevant endorsements for the same are on the Disembarkation Card (X-701).

Training in Pakistan:

446) With respect to the training at Pakistan, the confessional statements of co-accused persons against the appellant including his own confession are duly corroborated with the aforesaid depositions of the officers on Immigration duty who testified about the departure of the appellant to Dubai and his arrival at Bombay.

447) To undergo weapons training as a part of the conspiracy and to further the conspiracy to cause terrorist acts in India constitutes an offence. The aforesaid evidence divulge that the appellant along with other co-conspirators was given the said training to equip himself to commit terrorist acts in Bombay and, therefore, he was rightfully convicted for the same. In view of the entire evidence enumerated above, we hold that the appellant was actively involved in the conspiracy to cause blasts in Bombay and in consequence of the said involvement, he had committed various offences.

Sentence:

448) The appellant was given full opportunity to defend himself on the question of quantum of sentence. His statement was recorded on 10.10.2006 in which he prayed that the following factors, amongst others, may be considered while determining his sentence:

(i) On the date of the incident, he was 26 years old and was selling bananas on the street;

(ii) He is suffering from a pancreatic ailment and dependent on drugs;

(iii) He has been in custody since his arrest except when he was released on interim bail on 3 occasions on the ground of medical treatment; and

(iv) During the bail period, he has not committed any offence or violated any condition imposed by the Court and during this period, he was earning his livelihood and bearing his medical expenses by selling bananas.

449) Ms. Farhana Shah, learned counsel appearing for the appellant while reiterating the same and after taking us through the confession made by the appellant and the confessional statements of co-accused, meticulously pointed out that even if we accept the prosecution case about the participation of the appellant in the training, unloading of weapons, visiting Dubai and Pakistan for training and participation in certain meetings, the appellant merely witnessed the filling of RDX and he was not one amongst the persons who filled all those explosive materials. With regard to the above, in the light of the evidence in the form of his own confession and confessional statement of co-accused persons, it cannot be claimed that he merely witnessed the incident when his presence is evidently proved by acceptable materials.

450) On the other hand, learned senior counsel appearing for the CBI pointed out that there is no need to show any leniency since after realizing explosions that had taken place in Bombay on 12.03.1993, the appellant (A-100) had absconded and remained away from the clutches of law until he was arrested by the police. It is also pointed out that so far he has served nearly 15 years as pointed out by the counsel for the appellant.

451) Before considering the claim of both the sides, it is useful to refer the conclusion of the Designated Judge while determining the quantum of sentence. After stating all the details and narrating the entire events, the Designated Judge observed at page 41049 as under:

> "916) .....Thus in short though some leniency will be required to be shown to A-100 due to himself having not continued till end of commission of final acts achieving the object of conspiracy, still he will be liable for the due punishment as warranted for the acts committed by him."

452) Taking note of the above observation of the Designated Judge and of the fact that that there is no dispute about his participation in the training, evidence disclosed that he associated in unloading of weapons and there is no need to show any leniency in awarding sentence.

453) Under these circumstances, we fully agree with the conclusion arrived at by the Designated Court, consequently, the appeals filed by the appellant herein (A-100) are dismissed.

454) For convenience, we have reproduced the conclusion arrived at in respect of all the appeals dealt with under this part in Annexure 'A' appended hereto.

.....J.

(P. SATHASIVAM)

.....J.

(DR. B.S. CHAUHAN)

NEW DELHI;
MARCH 21, 2013.

Annexure 'A'

S.No	Criminal Appeal	Accused Name and Number	Sentence by Designated Court	Award by Supreme Court
1	1178/2007	Essa@Anjum Abdul Razak Memon (A-3)	Life Sentence	Confirmed
2	1179/2007 with 419/2011(State)	Rubina Suleman Memon (A-8)	Life Sentence	Confirmed Dismissed
3	1181/2007	Yusuf Abdul Razak Memon (A-4)	Life Sentence	Confirmed
4.	1127-1128/2007	Sardar Shahwali Khan (A-54)	Life Sentence	Confirmed
5	1252-1253/2007 with 413/2011 (State)	Ashrafur Rehman Azimulla Shaikh (A-71)	Life Sentence	Reduced to RI for 10 years Dismissed
6.	1365/2007	Imtiyaz Yunusmiya Ghavte (A-15)	Life Sentence	Reduced to the period already undergone.
7.	1224/2007	Smt. Vimal Thapa (A-112)	Life Sentence	Confirmed
8	1440/2007 with 1028/2012 (State)	Muzamil Umar Kadri (A-25)	Life Sentence	Confirmed Dismissed
9	1441/2007	Vijay Krishnaji Patil (A-116)	Life Sentence	Confirmed
10	401/2008 with 1023/2012(State) (A-136)	Moh. Salim Mira Moh. Shaikh @ Kutta (A-134) and Mohd. Kasam Lajpuria @ Mechanic Chacha (A-136)	Life Sentence RI for 10 year	Confirmed Dismissed
11	976-977/2008	Nasir Abdul Kader Kewal @ Nasir Dakhla (A-64)	Life Sentence	Confirmed
12	616/2008	Salim Rahim Shaikh @ Salim Babu Wrane (A-52)	Life Sentence	Confirmed

13	979-980/2008	Nasim Ashraf Shaikh Ali Barmare (A-49)	Life Sentence	Confirmed
14	633/2008	Bashir Ahmed Usman Gani Khairulla (A-13)	Life Sentence	Confirmed
15	651-652/2008	Dawood @ Dawood Taklya Mohd. Phanse (A-14)	Life Sentence	Confirmed
16	653 & 656/2008	Mohd. Moin Faridulla Qureshi (A-43)	Life Sentence	Confirmed
18	924/2008	Shaikh Ali Shakh Umar (A-57)	Life Sentence	Confirmed
19	933-936/2008	Niyaz Mohd. @ Aslam Iqbal Ahmed Shaikh (A-98)	Life Sentence	Confirmed
		Parvez Moh. Parvez Zulfikar Qureshi (A-100)	Life Sentence	Confirmed

ITEM NO.1-B COURT No.2 SECTION IIA
(For judgment)

S U P R E M E C O U R T O F I N D I
RECORD OF PROCEEDINGS

APPEALS RELATING TO LIFE SENTENCE:
(PART-2)

CRIMINAL APPEAL NO. 1178 OF 2007

ESSA @ ANJUM ABDUL RAZAK MEMON Appellant (s)

VERSUS
STATE OF MAHARASHTRA TR:STF,CBI MUMBAI Respondent(s)

crl.A.No. 1179/2007

and:
Crl.A.No.419/2011 (APPEAL AGAINST ACQUITTAL BY STATE)

Crl.A.Nos.1181/2007

Crl.A.No. 1127-1128/2007

Crl.A.No. 1252-1253/2007

AND
Crl.A.No.413/2011 (APPEAL AGAINST ACQUITTAL BY STATE)

Crl.A.No.1365/2007

Crl.A.No.1224/2007

Crl.A.1440/2007

AND

Crl.A.No.1028/2012 (APPEAL AGAINST ACQUITTAL BY STATE)

WITH
Crl.A.No.1441/2007

Crl.A.NO.401/2008

And
Crl.A.No.1023/2012 (APPEAL AGAINST ACQUITTAL BY STATE)

Crl.A.No.976-977/2008

Crl.No.616/2008

Crl.A.No.979-980/2008

Crl.No.633/2008

Crl.A.No.651-652/2008

..2/-

:2:

Crl.A.No.653 & 656/2008

Crl.A.No.924/2008

Crl.A.933-936/2008

Date: 21/03/2013 These matters were called on for prouncement of judgment today.

For Appellant(s) Mr. Rauf Rahim, Adv.

Mr. Shekhar Kumar, Adv..

Mr. Arvind Kumar Sharma, Adv.

Ms. Anjali Jha, Adv.

Ms. Jaspreet Gogia, Adv.

Mr. K.N. Rai, Adv.

Dr. Sushil Balwada, Adv.

Mr. Mushtaq Ahmad, Adv.
Mr. Shaikh Chand Saheb, Adv.

For Respondent(s) Mr. Mukul Gupta, Sr.Adv.
Mr. Satyakam, Adv.
Mr. Anubhav Kumar, Adv.
Mr. Anando Mukherjee, Av.
Mr. Harsh N. Parekh, Adv.
Mr. P. Parmeswaran, Adv.
Mr. B. Krishna Prasad, Adv.

Mr. Shekhar Kumar, Adv.

Mr. Asha G. Nair, Adv.

Mr. Mushtaq Ahmad, Adv.

Hon'ble Mr. Justice P.Sathasivam pronounced the judgment of the Bench comprising His Lordship and Hon'ble Dr. Justice B.S. Chauhan.

The appeals are disposed of in terms of the signed reportable judgment.

[Usha Bhardwaj] (Madhu Bala) [Savita Sainani]
Court Master Sr. P.A. Court Master

Signed reportable judgment is placed on the file.

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